Motion to dismiss
Submitted on its merits

12-161

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 525.

WILLIAM H. SEWARD, GEORGE F. SEWARD, WILLIAM E WALKER, AND CHARLES McNEAL, APPELLANTS,

vs.

JEAN BAPTISTE COMEAU, SHERIFF, ALEXANDER DECLOUET, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1878.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

No. 7950.

ALEX. DECLOUET ET ALS.
versus
WM. H. SEWARD, JR., AN ABSENTEE.

WM. H. SEWARD ET ALS.
versus
J. B. COMEAU, SHERIFF, ET ALS.

Transcript from State court.—Filed October 13th, 1876.

Transcript of records in suit No. 8000, entitled Alexander Declouet & als. vs. Wm. H. Seward, jr., an absentee, and suit No. 8030, entitled Wm. H. Seward & als. vs. Jean Bte. Comeau, sh'ff, & als.

District court, parish of St. Martin.

2 To the honorable the judge of the third judicial district of the State of Louisiana, holding sessions within and for the parish of St. Martin:

Alexandre Declouet and Mrs. Marie Charlotte Declouet, the widow of Chevalier Delhomme, of the parish of St. Martin, respectfully represent: That on the fifth day of March, 1870, Mrs. Noemie Arbonneaux, the wife of Charles Delhommer, of the parish of S' Martin, sold and transferred to William H. Seward, junior, then of the city of Washington, in the District of Columbia, and who has acquired no domicil, and who is now and for some time has been absent from the State of Louisiana, the Magenta plantation, situated in the parish of S' Martin, and described in the annexed copy of the act of sale, marked D and made a part of the petition.

That said sale was made for and in consideration of the price and sum of thirty-one thousand dollars, payable partly cash and partly on credit, and that of said price there remains due only the note hereto annexed marked B and made part of this petition, dated at New Orleans

3 on the fifth of March, 1870, in and by which the said William H. Seward, junior, promissed to pay to his own order at the Citizens' Bank, in the city of New Orleans, on the first day of March, 1873, the sum of five thousand eight hundred and thirty-three dollars and thirty-three and a third cent', with interest thereon at the rate of eight per cent. per annum from the date of said note until its payment, subject to a credit of eight hundred dollars from Geo. F. Seward, by draft on New York, paid in April, 1874.

Your petitioners aver that they are now and since the 16th of January, 1873, have been holders and owners of said note, as shown by copy of act of transfer from Mr. Charles Delhommer to them, which copy is marked A and made a part of this petition; that though amicable demand has been made for the payment of said note from William H. Seward, junior, and at the elected domicil, it still remains unsatisfied. They allege that the act of sale from Mrs. Charles Delhommer to William H. Seward, junior, was duly recorded in the recorder's office of the

parish of St. Martin, in the book of conventional mortgages, on
4 the 15th of March, 1870, and that the payment of the note hereinbefore mentioned is secured by the vendor's mortgage and privilege on the whole of the property described in the act of sale from Mrs. Charles Delhommer to William H. Seward, junior, the recorder's certificate, the recording of said act marked E, and made part of this petition.

Your petitioners aver that the act of sale from Mrs. Charles Delhommer to William H. Seward, junior, imports a confession of judgement in favor of any holder of the note now sued upon by them, and that according to said act and under the law they are entitled to an order of seizure and sale against the property, subject to the mortgage and privilege securing the payment of the aforesaid note.

Your petitioners allege that not only the said William H. Seward, junior, is absent from the State of Louisiana, but that he is represented by no one in the State, and that an attorney should be appointed to him in this case, contradictorily with whom the intended seizure and sale shall be prosecuted. They respectfully suggest for that appointment the name of Edward Simon, an attorney at law of the parish of
5 St. Martin, who here has always acted as the legal adviser of William H. Seward, junior.

The premises considered, your petitioners respectfully pray that the whole of the property sold by Mrs. Charles Delhommer to William H. Seward, junior, on the 5th of March, 1870, and described in the annexed copy of the act of sale marked D, be seized and sold for cash, as the law requires, to satisfy and pay the sum of five thousand eight hundred and thirty-three dollars and thirty-three and a third cent', with eight per cent. per annum interest thereon from the 5th of March, 1870, subject to a credit of eight hundred dollars paid in April, 1874, and the cost of these proceedings. They further pray that an attorney be appointed, to represent in this case William H. Seward, junior, and for general relief; and as in duty bound.

(Signed) DEBLANC & FOURNET,
Of Counsel for Petitioners.

STATE OF LOUISIANA,
Parish of S' Martin:

Before me, the undersigned authority, this day appeared Z. T. Fournet, esq., one of the attorneys of petitioners, who under oath declared that William H. Seward, junior, is absent from the State of Louisiana,
6 and the judge of the third judicial district absent from the parish of S' Martin.

(Sig'd) Z. T. FOURNET.

Sworn to and subscribed this day of August, A. D. 1875.
(Signed) OSCAR HALPHEN, *J. P.*

STATE OF LOUISIANA,
Parish of S' Martin:

The prayer of the foregoing petition is granted. It is therefore ordered that Edward Simon, esq., be and is hereby appointed as attorney to represent in this case the absent defendant William H. Seward, junior, and that after legal notice the whole of the property sold by Mrs. Charles Delhommer to the said William H. Seward, junior, on the 5th of March, 1870, and described in the annexed document marked D, be seized and sold as the law prescribes for cash, to satisfy plaintiff's claim, amounting to five thousand eight hundred and thirty-three dollars

and thirty-three and a third cent', with eight per cent. per annum interest thereon from the fifth of March, 1870, subject to a credit of eight hundred dollars, to be computed as paid on the 1st of April, 1874, and the cost of these prodeedings.

7 Given under my hand, in the absence from the parish of S' Martin of the judge of the third judicial district of the State of Louisiana, on the fourth day of August, A. D. eighteen hundred and seventy five (1875).

(Signed) GABRIEL A. FOURNET,
Parish Judge.

5 OF AUGUST, 1875.

I accept the appointment of attorney of William H. Seward in the above proceedings.

(Signed) EDWARD SIMON.

R'd & filed August, 1875.

(Signed) ALCEDE VEAZEY, *Clerk.*

STATE OF LOUISIANA,
Parish of S' Martin:

Be it known that on this the fifteenth day of July, eighteen hundred and seventy five, before me, Omer Martin, a notary public of the parish of S' Martin, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Noemie Arbonneaux, the wife of Charles Delhommer, both residing in the parish of S' Martin, the said Charles Delhommer herein appearing to assist and authorize his wife, and the said Mrs. Delhommer, assisted and authorized

8 as aforesaid, declared to the undersigned notary and witnesses that for value then received she, on the 16th of January, 1873, transferred to Alexander Declouet and to Mrs. Marie Charlotte Declouet, widow of Chevalier Delhomme, of the parish of S' Martin, a note in figures and words as follows:

B $5,833.33⅓. NEW ORLEANS, *March 5th*, 1870.

On the first day of March, 1873, after date, I promise to pay to the order of myself at the Citizens' Bank of Louisiana, in this city, the sum of five thousand eight hundred and thirty three dollars and thirty three and one-third cents, with 8 % per cent. interest thereon at the rate of eight per cent. per annum from date until paid. Value received.

(Signed) WM. H. SEWARD.

(Across the face in red:) Ne varietur. Secured by mortgage which is duly stamped.

New Orleans, March 5th, 1870.

(Signed) M. T. DUCROS,
Not. Pub.

The said appearer further declared that the aforesaid note bears the following endorsement, to wit: Wm. H. Seward. Filed March 20th, 1871. Attest: signed H. P. Fournet, clerk, R'd and filed April 11th, 1872. Attest: signed H. P. Fournet, clerk.

January the 16th, 1873. For value received this note is transferred to Alexandre Declouet and Mrs. Widow Chevalier Delhomme.

(Signed) NOEMIE DELHOMMER.

9 Authorized and assisted by—

(Signed) CHARLES DELHOMMER.

And the said appearer further declared that the said Alexander Declouet and Widow Chevalier Delhomme are now the owners and lawful holders of the aforesaid note and of the mortgage and privilege securing its payment, as als' of every right which the said Mrs. Noemie Arbonneaux had and could exercise under the act of sale from her to Wm. H. Seward, passed before M. T. Ducros, notary public of the city of New Orleans, on the 5th of March, 1870.

Thus done and passed at Breaux Bridge, in the parish of S' Martin, on the day, month, and year first above written, in the presence of Henri Comeau and Leonce Ransonet, competent witnesses, who have signed with the notary and appearer, after the reading of this act.

(Original signed) NOEMIE DELHOMMER.
" " CHS. DELHOMMER,
To authorize his wife.
" " HENRI COMEAU.
" " LEONCE RANSONET.
" " O. MARTIN, *Notarie.*

A true copy from the original which has recorded in my office under date of the 20th July, 1875, in book of conveyances, folio 406 &
10 407, recorder's office, parish of S' Martin, this 22nd July, A. D. 1875.

(Signed) P. A. ORY,
Recorder.

"B" $5,833.33⅓. NEW ORLEANS, *March 5th*, 1870.

On the first day of March, 1873, after date, I promise to pay to the order of myself at the Citizens' Bank of Louisiana, in this city, the sum of five thousand eight hundred and thirty-three dollars thirty-three and one-third cents, with interest thereon at the rate of eight per cent. per annum from date until paid. Value received.

(Signed) WM. H. SEWARD.

(Across the face in red:) Ne varietur. Secured by mortgage which is duly stamped.

New Orleans, March 5th, 1870.

(Signed) M. T. DUCROS,
Not. Pub.

(Endorsed on the back of the note:) (Signed) Wm. H. Seward.

January 16th, 1873, for value received this note is transferred to Alexandre Declouet and Mrs. Widow Chevalier Delhomme.

(Signed) NOEMIE ARBONNEAUX.
Authorized & assisted by—
(Signed) CHS. DELHOMMER.

R'd & filed April 11th, 1872. Attest:
(Signed) H. P. FOURNET, *Clerk.*

Filed March 20th, 1871. Attest:
(Signed) H. P. FOURNET, *Clerk.*

D.

STATE OF LOUISIANA,
City of New Orleans:

11 Be it known that on this fifth day of March, in the year one thousand eight hundred and seventy, before me, Marcel T. Du-

cros, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, in presence of the witnesses hereinafter named and undersigned, personally came and appeared Charles Delhommer, of the parish of St. Martin, acting here as the attorney in fact of his wife, Mistress Noemie Arbonneaux, by virtue of a power of attorney passed before Omer Martin on the twenty-fifth day of February, 1868, who acknowledge to have sold and transferred, and by these presents sells and transfers with all the warranties prescribed by the laws of this State, to William H. Seward, junior, of the city of Washington, in the District of Columbia, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging possession thereof, the Magenta plantation, situated in the parish of St. Martin, in this State, on the west bank of Bayou Teche, composed of and comprising heretofore the several tracts of land hereinafter described, to wit:

12 1st. A tract of land situated in the parish of St. Martin, having on Bayou Teche a front of nine arpents with a depth of forty arpents and in the depth an opening of about twenty-two arpents, being the land sold by Alexandre Latiolais to Christophe Chevalier Delhomme on the fifth of March, 1849, and which then was bounded above by the land of Narcisse Bergeron and below by that of said Christophe C. Delhomme.

2°. A tract of land situated in the said parish of S' Martin, having a front of nine arpents with a depth of forty arpents and in the depth an opening of about twenty-two arpents and a superficial area of five hundred arpents more or less, being a tract of land acquired by Christophe Chevalier Delhomme from Valeriem Martin on the second of May, 1849, and which on that date was bounded, to wit, above by lands belonging to the heirs of Marie Nezar Widow Lastie Roy, below by lands of the purchases, and south by Bayou Teche.

The two tracts hereinbefore described were acquired by Mrs. Charles Delhommer from Mrs. Marie Charlotte Declouet, the widow of

13 Christophe Chevalier Delhomme by act passed before Feyus Fuselier, then a notary public in the parish of St. Martin, on the 8th day of August, 1857.

3°. A tract of land situated in the parish of S' Martin, on the right bank of bayou Teche, having on said bayou a front of five arpents, with a depth of forty arpents acquired by Charles Delhommer from Mrs. Widow Christophe Chevalier Delhomme by act passed before Simeon Valery Martin on the 17th of April, 1858, and being a part of the plantation described in the dation in payment made by the said Charles Delhommer to his wife, the present vendor, by act passed before Homere Martin, a notary public, on the 29th of January, 1867.

4°. Lots five and six, or east half of southeast quarter of section twenty-four in township eight south, of range No. five east, containing fifty-one $\frac{80}{100}$ acres.

5°. Lots one, two, three, & four, the southwest quarter of northwest quarter, the southwest quarter of southeast quarter, and the southwest quarter section, of fractional section No. twenty-four, in township eight south, of range five east, containing according to certificate 1854 from L. J. Sigur, three hundred and thirty-four $\frac{32}{100}$ acres.

14 6°. The north half of northeast quarter of section No. twenty-three, in township eight south, of range five, measuring seventy-eight $\frac{4}{100}$ acres.

7°. A tract of concession land measuring one arpent front on a depth

of twenty arpents, bounded north by lands of Renaud Bergeron, south by Widow Pierre Bergeron, and east by Odite Bernard.

8°. The west half of fractional section No. twenty-five, in township eight south, of range five east, containing one hundred and seventy-one $\frac{32}{100}$ acres.

9°. Lot No. one, of section twenty-six, of township eight south, range five east, measuring twenty-six $\frac{16}{100}$ acres.

10°. The one undivided half of a swamp land measuring half an arpent front on a depth of twenty, bounded north by land of Pierre Bergeron, south by land of B. Bergeron, east by land of Odile Bernard, and west by the Mouton's lands.

11th. Lots two and three, of section twenty-three, in township eight south, of range five east, measuring eighty-two $\frac{72}{100}$ acres.

The lands described under Nos. four, five, six, seven, eight, nine, ten, & eleven were purchased by Charles Delhommer from Theogene Theodule and Theophate Richard, as shown by three acts passed be-
15 fore Simeon Valery Martin, on the 27th October, 1857.

12°. The east half of section twenty-five, in township eight south, range six east, containing one hundred and thirty $\frac{50}{100}$ acres, bounded north by section twenty-four east, by section thirty, and south and west by lands then belonging to said Charles Delhommer, and now to his wife, in township eight south, of range six east, which tract was acquired by exchange made between Charles Delhommer and Mrs. Pierre Berger born Marguerite Cline Bergeron, as shown by act passed before Homere Martin, a notary public, on the 25th of October, 1865.

13°. The west fractional of lot No. four of fractional section No. twenty-seven, fractional section No. twenty-eight, and lots three and four of fractional section thirty-four, in township eight south, of range five east, containing two hundred and seventy-three $\frac{36}{100}$ acres, which land was bought by Charles Delhommer from Joseph M. Moore by act passed before Yres Davy, recorder of the parish of St. Landry, on the 31st of May, 1858. Mistress Charles Delhommer is the owner of the several tracts of land above and herein described, having acquired
16 the same from her husband, as shown by the dation in payment of the 29th of January, 1867, and before referred to. The lands described in this act have been reduced in quantity by the sales hereafter mentioned, to wit:

1°. A sale from Charles Delhommer to Celim Bergeron, wife of Pierre Berger, for one hundred and thirty $\frac{88}{100}$ acres, by act passed before Homere Martin, a notary public, on the 25th of October, 1865.

2°. A sale from Mrs. Charles Delhommer to Columbus Hamelton, of four superficial arpents, by act passed before the same notary on the 25th of October, 1869.

3°. A sale from Mrs. Charles Delhommer to Belizaire Arcessenaud, of eighty-eight $\frac{11}{100}$ arpents, per act passed before same notary on the 25th October, 1869.

4°. A sale from Mrs. Charles Delhommer to Pierre Ursin Broussard, of three superficial arpents, by act passed before the same notary on the 6th of January, 1869.

5°. A sale from Mrs. Charles Delhommer to widow Michel Castro, of thirty-nine $\frac{76}{100}$ arpents, by act passed before same notary on the third of September, 1867.

6°. A donation of forty superficial arpents from Mrs. Charles Delhommer to freed woman, Melinda Strackeman, by act passed before the same notary on the 14th of April, 1867.

17 7°. A sale of forty superficial arpents from Mrs. Charles Del-

hommer to Mrs. Octave Trouard, by act under private signature, of the second of March, 1867, and deposited in the recorder's office in the parish of S' Martin on the 3rd of March of same year.

8°. A sale from the same lady to Martin Traham of eighty-one $\frac{56}{100}$ arpents, per act passed before Homere Martin, a notary public, on the of February, 1867.

9°. A sale from Charles Delhommer to Jacques Delhommer of twenty superficial arpents, as per act passed before Homere Martin on the 12th of September, 1866.

10°. A sale from Charles Delhommer to Aimé Tiercelin of thirty superficial arpents, by act passed before Martin on the 11th August, 1866.

11°. A sale from Charles Delhommer to Nicholas Thibodeaux of about forty arpents, by act passed before Simeon Valery Martin, and deposited in the office of the recorder of the parish of S' Martin on the eleventh of February, 1863, under No. 4840.

12°. A sale from Charles Delhommer to Theogéne Richard of about one hundred and seventy superficial arpents, by act passed before Simeon Valery Martin on the 25th of April, 1862.

13°. A sale from Charles Delhommer to Mr. M. U. Vail, the for-
18 mer acting as attorney in fact of his wife, of forty superficial arpents, by act passed before Homere Martin, notary, on the 31st of December, 1869.

14°. A sale from Mrs. Charles Delhommer to Hilaire Hilaire, freedman, of forty arpents, by act passed before Homere Martin, a notary public, on the 25th October, 1869.

15°. There is also a donation of one acre of land from Mrs. Charles Delhommer to the American Missionary Association of New York, by act passed before Homere Martin, a notary public, in 1869, the conditions of which have been violated by the donee, and therefore the rights and actions of the vendor against said donee to have said donation avoided and annulled are transferred to the present purchaser.

The vendor, though guarantying that the Magenta plantation contains from sixteen to seventeen hundred arpents of land, tranfers, nevertheless, the whole of her title to the several tracts of land hereinbefore described, with exclusively the deduction indicated in the acts referred to, which titles and acts were submitted to and examined by the honorable Edward Simon, acting as attorney for the purchaser.

Together with said plantation are sold the buildings, fences,
19 and improvements generally thereon, being also the mules, oxen, carts, corn, fodder, seed cane, and agricultural implements, and, in fact, everything thereto belonging, except the horses, carriages, buggies, household furniture and personal effects, and the interest of Mr. Edward Rinach in the moveable property on said plantation, which interest is understood by and known by said purchaser.

This sale is made and accepted for and in consideration of the price and sum of thirty-one thousand five hundred dollars, which has been paid in the following manner, to wit: seven thousand five hundred dollars paid in ready money by the said purchaser to the said attorney in fact, who hereby acknowledges the receipt thereof, and grants a full acquittance for the same; and for the balance of said price, amounting to the sum of twenty-four thousand dollars, the said purchaser has made and subscribed four several promissory notes, dated this day, all drawn to the order of and endorsed by himself, and payable at the Citizens' Bank of Louisiana, in this city, one for six thousand and five hundred dollars on the first of June next, 1870, one for five thou-
20 sand eight hundred and thirty-three $33\frac{1}{3}_{100}$ dollars on the first

of March, 1872, and one for the sum of five thousand eight hundred and thirty-three $33\frac{1}{100}$ dollars on the first of March, 1873, all bearing interest from date until paid, at eight per cent. per annum; which said notes, after having been paraphed by me, notary, in order to identify them with this act, were delivered to the said attorney in fact, as he acknowledges.

To secure the punctual and entire payment of the four notes hereinbefore mentioned, the said property herein conveyed shall remain mortgaged as a whole in favor of said seller or of any other holder of said notes; and in case of a failure on the part of the purchaser to comply with any of his obligations, said property shall be seized and sold as a whole, and not in parts, to satisfy any of said obligations, and the vendor's mortgage and privilege is retained not only in favor of the present vendor, but in favor of any holder of any of the four notes hereinbefore recited, the said purchaser binding and obliging himself not to sell, alienate, or incumber the said property to the prejudice of these presents.

21 By the annexed certificate of the recorder of the parish of S' Martin, dated the first instant, it appears that said property is free from all incumbrance in the name of Mrs. Charles Delhommer.

To have and to hold said property and appurtenances unto the said purchaser, his heirs and assigns forever.

And the said attorney in fact, for his said constituent, the said plantation and appurtenances, to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents.

And the said attorney in fact does moreover subrogate the said purchaser to all the rights and actions of warranty which his constituent has or may have against her own vendor or any other former owners of said plantation, fully authorizing the said purchaser to exercise the said rights & actions in the same manner as she herself might or could have done.

The internal-revenue stamps for thirty-one dollars & fifty cents is hereto fixed and duly cancelled.

This done and passed in my office at the city of New Orleans on the day, month, and year first above written, and in presence of Jo-
22 seph W. Jones and William A. Robertson, competent witnesses, who sign their names with said parties and me, notary.

(Original signed) CHARLES DELHOMMER.
WM. H. SEWARD.
J. W. JONES.
W. A. ROBERTSON.
M. T. DUCROS, *Not. Pub.*

I certify the foregoing to be a true copy of the original act extent in my current records.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans on this sixteenth day of March, eighteen hundred and seventy-one.

[L. S.] (Signed) M. T. DUCROS,
E. *Not. Pub.*

RECORDER'S OFFICE,
Parish of S' Martin.

I certify that the foregoing act has been recorded in this office, vol-

ume U of conventional mortgages, folio 230, No. 8577, on the 15th of March, 1870.

Witness my hand and seal of office at S' Martinsville, this 16th day of March, A. D. 1871.

[SEAL.] (Signed) ALF. F. PESCHIER,
D'y Recorder.

3rd judicial district court, parish of S' Martin.

ALEXANDRE DECLOUET & AL.
vs.
WM. H. SEWARD, JR., AN ABSENTEE. } No. 8000.

23 The State of Louisiana to Wm. H. Seward, jr., absentee, and to Edward Simon, esq., appointed to represent said Wm. H. Seward, jr., in the case entitled as above:

You are hereby notified that Alexandre Declouet and Marie Charlotte Declouet, widow of Chevalier Delhomme, of the parish of S' Martin, have filed in the office of the clerk of the third judicial district court for the parish of S' Martin, a petition in which they allege that William H. Seward, junior, an absentee, is indebted unto them in the sum of five thousand eight hundred and thirty-three dollars and thirty-three and one-third cents, with interest thereon at the rate of eight per cent. per annum, from the 5th of March, 1870, subject to a credit of eight hundred dollars, to be computed as paid on the 1st of April, 1874, the aforesaid sum being represented by a note dated at New Orleans on the 5th day of March, 1870, subscribed by the said Wm. H. Seward, junior, to his own order, and by him endorsed and delivered to Mrs. Noemie Arbonneaux, the wife of Charles Delhommer, of the parish of S' Martin, as part of the price of the Magenta plantation, said note made pay-
24 able at the Citizens' Bank in New Orleans on the first day of March, 1873, has been transferred to and is now owned and held by the said Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme.

The said Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme, further represent in their petition, that to secure the payment of the aforesaid claim in principal and interest, they have the vendor's mortgage and privilege on the Magenta plantation sold by Mrs. Charles Delhommer to William H. Seward, junior, by act passed on the 5th day of March, A. D. 1870; and the said Alexandre Declouet and Marie Charlotte Declouet, widow of Chevalier Delhomme, have prayed for the seizure & sale of said plantation.

And whereas the seizure & sale applied for by the said parties have been granted by the judge of the parish court of the parish of S' Martin, in the absence of the judge of the 3rd judicial district court, the said William H. Seward, junior, and Edward Simon, esq., as his appointed attorney, are hereby notified to come forward and satisfy the aforesaid claim in principal, interest, and costs within three days from the serv-
ice of the present notice, adding one additional day for every ten
25 miles between the place of residence of said Edward Simon's residence and the court-house of the parish of S' Martin, in default whereof the property subject to the mortgage and privilege hereinbefore mentioned shall be seized and sold for cash, to satisfy the sum of five thousand eight hundred and thirty-three dollars and thirty-three and one-third cent, with interest thereon at the rate of eight per cent. per annum, from the 5th of March, 1870, subject to a credit of eight

hundred dollars, to be computed as paid on the 1st of April, 1874, with the costs of these proceedings.

Given under my hand at St. Martinsville, on this fifth day of August, A. D. eighteen hundred and seventy-five, the words "for cash" interlegned before signing.

[SEAL.] (Signed) ALCEDE VEAZEY,
Clerk Dist. Court.

Received the notice of which the foregoing is a copy on the fifth day of August, A. D. 1875, and on the same day, month, & year above written, duly served the same by handing it to Edward Simon, personally, attorney, appointed to represent William H. Seward, jr., in the town of S' Martinsville.

(Signed) ALFRED TUSELIER.
Dy. Sh'ff.

26 R'd & filed August 12th, 1875.
(Signed) ALCEDE VEAZEY, *Clerk.*

STATE OF LA.,
Parish of S' Martin:

I solemnly swear that I will well and faithfully fulfill all the duties incumbent on me as attorney of W. H. Seward, jr., absentee, to the best of my ability and knowledge.

(Signed) EDWARD SIMON.

Sworn to and subscribed before me this 5th day of August, A. D. 1875.
(Signed) ALCEDE VEAZEY,
Clerk of Court.

Rec'd & filed August 5th, 1875.
(Signed) ALCEDE VEAZEY, *Clerk.*

To the honorable the judge of the third judicial district of the State of Louisiana, in and for the parish of S' Martin:

The petition of William H. Seward, of Westchester County, State of New York, and of George F. Seward, of Orange County, State of New York, now resident consul general of the Government of the United States, of Shanghai City, in the Empire of China, with respect represents:

That Jean Baptiste Comeau, sheriff of the parish of S' Martin, by virtue of a pretended writ of seizure & sale, sued out an executory process, by Alexandre Declouet and Marie Charlotte Declouet, both of the parish of S' Martin, in suit No. 8000 of your honorable court, pretends to have seized, and has illegally advertised in the journal Echo, for sale at public auction for Saturday, the second day of October, 1875, the Magenta sugar plantation and its appurtenances, as belonging to William H. Seward, being the property hereinafter described, which Charles Delhommer, representing himself as the agent, duly authorized to that effect, of his wife, Noemie Arbonneaux, pretends to have sold, with good and valid titles, to William H. Seward, on the 5th of March, 1870, by notarial act passed before Marcel Ducros, of the city of New Orleans, for the price of $31,000 *dollars*, a part of the unpaid balance due of which is represented by the mortgage note of five thousand dollars, payable to said W. H. Seward's own order, with eight per cent. interest per annum from the 5th of March, 1870, subject to a credit of eight hundred dollars, paid April 1st, 1874, upon

27

which said Alexandre Declouet and Marie Charlotte Declouet, Widow Chevalier Delhomme, have founded their pretended suit by executory process, as holders and joint owners thereof, by transfer after
28 maturity from the previous holders against said property, described as follows, to wit:

1st. A tract of land situated in the parish of St. Martin, having on Bayou Teche a front of nine arpents, with a depth of forty arpents, and in the depth an opening of about twenty two arpents, it being the land sold by Alexandre Latiolais to Christophe Chevalier Delhomme, on the 5th of March, 1849, and which then was bounded by land of Narcisse Bergeron, and below by that of said Christophe C. Delhomme.

2nd. A tract of land situated in the parish of St. Martin, having a front of nine arpents with a depth of forty arpents, and in the depth an opening of twenty-two arpents and a superficial area of five hundred arpents, more or less, being a tract of land acquired by Christophe Chevalier Delhomme from Valerien Marteio, on the 2nd of May, 1849, and which on that date was bounded, to wit, above by lands belonging to the heirs of Marie Nezot, widow Lastie Ray; below by lands of the purchaser, and south by the Bayou Teche.

3rd. A tract of land situated in the parish of St. Martin, on the right bank of Bayou Teche, having on said bayou a front of five ar-
29 pents, with a depth of forty arpents, acquired by Charles Delhommer from Mistress Widow Christophe Chevalier Delhomme, by act passed before Simeon Valery Martin, on the 17th of April, A. D. 1858, and being a part of the plantation described in the action, in payment made by the said Charles Delhommer to his wife, the present vendor, by act passed before Homere Martin, a notary public, on the 29th January, 1867.

4th. Lots 5 and 6, or east half of fractional southeast quarter of section 24, in township 8 south, range No. 5 east, containing fifty-one $\frac{80}{100}$ acres.

5th. Lots 1, 2, 3, and 4, S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, the S. W. $\frac{1}{4}$ of S. E $\frac{1}{4}$, and the southwest $\frac{1}{4}$ section of fractional section No. 24, in township 8 south, range 5 east, containing, according to a certificate of 1854, from L. D. Sigue, three hundred and thirty-four $\frac{32}{100}$ acres.

6th. The north half of northeast $\frac{1}{4}$ of section No. 23, in township 8 south, of range 5 east, measuring seventy-eight $\frac{4}{100}$ acres.

7th. A tract of concession land, measuring one arpent front, on a depth of twenty arpents, bounded north by land of Renauld Bergeron, south by Widow Pierre Bergeron, and east by Odile Bernard.
30 8th. The west half of fractional section No. 25, in township 8 south, range 5 east, containing one hundred and seventy-one $\frac{32}{100}$ acres.

9th. Lot 1 of section No. 26, of township 8 south, range 5 east, measuring twenty-six $\frac{16}{100}$ acres.

10th. The one undivided half of a swamp-land, measuring half an arpent front, on a depth of twenty, bounded north by land of Pierre Bergeron, south by land of B. Bergeron, east by land of Odile Bernard, and west by the Mouton's land.

11th. Lots 2 and 3 of section 23, in township 8 south, of range 5 east, measuring eighty-two $\frac{72}{100}$ acres.

The lands described under No. 4, 5, 6, 7, 8, 9, 10, and 11 were purchased by Charles Delhommer from Théogéne Theodule and Theophile Richard, as shown by these acts, passed before Simeon Valery Martin, on the 27th of October, 1857.

12th. The east half of section 25, in township 8 south, of range 6 east,

containing one hundred and thirty $\frac{50}{100}$ acres, bounded north by section 24, east by section 30, and south and west by lands then belonging to the said Charles Delhommer, and now to his wife, in township 8 south, 6 east, which land was acquired by exchange made between
31 Charles Delhommer and M'tress Pierre Berger, born Margurite Celine Bergeron, as shown by act passed before Homere Martin, a notary public, on the 25th of October, 1865.

13th. The west fractional half of lot No. 4, of fractional section No. 28, and lots 3 and 4 of fractional section No. 34, township 8 south, range 5 east, containing two hundred and seventy-three $\frac{36}{100}$ acres, which land was bought by Charles Delhommer from Joseph M. Moore, by act passed before Yoes D'Avy, recorder of the parish of S'Landry, on the 31st of May, 1858, together with said lands, all the buildings and improvements thereon, five mules, oxen, seven carts, fifty acres of corn, fifteen loads of fodder, seed-cane, agricultural implements, four harrows, ten ploughs, seized in the above suit. Said lands shall be divided into lots of not less than ten nor more than fifty acres, and the plat of survey deposited in my office, according to the constitution and laws of the State of Louisiana. Terms, cash on the spot.

(Signed) J. B. COMEAU,
Sheriff.

Your petitioners further represent that William H. Seward conveyed said property to George F. Seward on the fifth of November, 1872, by an act of sale under private signature, duly acknowledged and
32 recorded previous to said pretended seizure, under the belief flowing from the representations of Charles Delhommer that his wife had derived a valid title thereto from a valid judgment of separation of property from him, rendered on the 29th of September, 1866, for the recovery of thirty-six thousand and thirty-two dollars and 91 cents, the execution of the same by a dation in payment, dated 29th of January, 1867, passed before Omer Martin, notary, and a valid power of attorney from her to her said husband.

Your petitioners further aver that said pretended order of seizure and sale, the pretended seizure and advertisement of sale, by said sheriff, and all proceedings therein, are illegal, null, & void, and unless arrested by a mandate of injunction, will inflict an irreparable injury on your petitioners for the following reasons:

1st. Because the execution by William H. Seward of the note upon which executory process of Alexandre and Marie Charlotte Declouet in suit No. 8000 is founded, and the note itself therefore was made in error and without consideration, inasmuch as the judgment so called in
33 suit No. of your honorable court in favor of Noemie Arbonneaux vs. Charles Delhommer, her husband, for a separation of property, being an absolute nullity, from the fact that she did not have and was without the authorization of the court before which she had brought her action to sue her said husband, notwithstanding the insignificant words found on the minutes, carries with itself not only the invalidity and absolute nullity of the execution of said judgment by the dation en paiement itself, and the power of attorney from Noemie Arbonneaux to her husband, to sell if any there is, but also the nullity of the sale of said property from Charles Delhommer, as agent, to William H. Seward, and of the note and mortgage with vendor's lien.

2nd. Because on account of the cause above mentioned in preceding No. 1, your petitioners have reason to fear of being disquieted, and consider they are in *emmenent* danger of eviction.

3rd. Because supposing even the act of sale to William H. Seward and alleged mortgage on the property retained as third possessor should have been proceeded against and notified according to law as he
34 acquired in good faith said property for a valuable consideration.

4th. Because if it were necessary to have William H. Seward represented as an absentee in the proceedings of suit No. 8000, a curator besides an attorney should have been appointed to represent him.

5th. Because no notice of seizure as required by article 654 of the code of practice was given to the seized debtor or to his representatives after the so-called seizure and pretended taking of possession by the said sheriff were effected.

6th. Because after the appointment by William H. Seward of Edward Simon, esq., as his special agent, and the exhibition of the power of attorney therefor to the counsel of the seizing creditors, who was informed of the fact, all the notice required by virtue of said pretended proceedings via executiva should have been served on said agent as such and not on Edward Simon as attorney of the absentee.

7th. Because said sheriff has advertised said property for sale into lots of not less than ten nor more than fifty acres on an expensive survey to be made, in violation of the express stipulation in the above mentioned pretended act of sale from Charles Delhommer, as agent,
35 to William H. Seward to the contrary, to wit, that if levied on it would be sold as a whole.

8th. Because said property, being still under the seizures of the collector of taxes of St. Martin Parish, enjoined in suit No. 6752 of your honorable court, and No. 7002 of parish court, said collector could not be divested of his seizures and possession of said property under them by the pretended subsequent seizure and possession of same by the sheriff on execution of said executory process in suit No. 8000.

9th. Because, besides the reasons set forth in ground No. 1 above mentioned, said note is also invalid and null for want of consideration, as Noemie Arbonneaux nor those under whom she pretends to hold, Charles Delhommer and Joseph M. Moore, never had nor could have had title to the two hundred and seventy-three $\frac{36}{100}$ acres derived from the government of the U. States or State of La. described in No. 13 of the above advertisement as having been sold to William H. Seward under such a description, and the real measure of the land which she pretended to have sold coming shortly over one-twentieth of the 15 or 1,700 acres expressed in the pretended contract of sale and guar-
36 anteed, William H. Seward would be entitled to a diminution of the price in proposition the deficiency found to an amount which nearly covers said note, if not entirely.

10th. Because the government, either of the United States or the State of Louisiana, as the case may be, the original owners of the land described in the notice of sale under Nos. 4, 5, 6, 8, 9; 11, 12, & 13 not being divested of the fee in said lands until a patent issues, the disposition thereof is still under its control, and nothing but a defective and incomplete title to these lands, amounting to over one-half of the quantity claimed to have been conveyed to William H. Seward by Noemie Arbonneaux, could have passed by her pretended sale sufficient to put your petitioner in fear of being disquieted.

Your petitioners further represent that by the illegal and unwarranted acts of Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme, they have suffered damages to the amount of fif-

teen hundred dollars, including attorney's fees, for which they are liable in solido.

Wherefore your petitioners pray that after the prerequisites of law, and tendering a bond in the amount which may be required by
37 your honorable court, that a mandate or writ of injunction directed to Jean Baptiste Comeau, sheriff of the parish of St. Martin, and to Alexandre Declouet, and Marie Charlotte Decloute, widow Chevalier Delhomme, be granted, prohibiting from selling the within described property as intended by them; that each of them be duly cited to appear before your honorable court to answer this petition, and, the premises considered, it be ordered, adjudged and decreed in favor of your petitioners that the injunction herein sued out be made perpetual and absolute; that the said mandate or writ of seizure and sale sued out by defendants, and seizure made by said sheriff, be set aside and annulled; that the pretended act of sale from Charles Delhommer, as agent of Noemie Arbonneaux, his wife, to William H. Seward, together with her judgment so-called against Charles Delhommer, her husband, in suit No. , the pretended dation en paiement from him to her in execution on the same and power of attorney from her to him, be declared null and void; that the note and mortgage with vendor's lien claimed be also considered as nullities, in the event of a contrary opinion
38 by the court; that said note be credited with the amount of the deficiency found in the measure of the number of acres sold predicated on the price of the sale thereof, and finally, that Alexandre Declouet and Marie Charlotte Declouet be condemned to pay in solido to your petitioners fifteen hundred dollars damages and costs; your petitioners also pray for general relief, as in duty bound.

(Signed) EDWARD SIMON,
Attorney for Petitioners.

STATE OF LA.,
P'h of St. Martin:

Before me, the undersigned authority, personally came and appeared Edward Simon, attorney for plaintiff in above petition, who, after being duly sworn by me, declares and says that he is the attorney of William & George F. Seward, who are now absent from the parish of St. Martin & State of La., and all the facts and allegations in the foregoing petition are true and correct to the best of his knowledge and belief.

(Signed) EDWARD SIMON,
Attorney for P'ffs.

Sworn to and subscribed before me this 18th of September, 1875.

(Signed) OSCAR HALPHEN,
Just' Peace.

R'd and filed September 30th, 1875.

(Signed) JOS. BORDIER,
Deputy Clerk.

39 *Order.*

Let, and it is hereby ordered that, an injunction issue as prayed for in the above and foregoing petition of William H. Seward and George F. Seward, former defendant in the suit, by executory process No. 8000, in the district court, parish of St. Martin, in their injunction suit vs. Alexandre Declouet & al. (plaintiffs in said suit), No. 8000, on petitioners in said injunction suit furnishing injunction bond conditioned as the law

requires, with good solvent security in the sum of one thousand dollars, the whole according to law.

Granted at chambers this 25th September, 1875.

(Signed) HENRY TRAIN,
Judge 3rd Jud. Dist.

ST. MARTINSVILLE, *29th September*, 1875.

I hereby accept service of the foregoing petition and of the above mandate of injunction, and waive service of citation, to have same effect as if said petition, writ of injunction, and citation in above suit were regularly served on me.

(Signed) J. B. COMEAU,
Sheriff.

Injunction bond.

Third district court.

STATE OF LOUISIANA, *Parish of St. Martin.* } No.

Know all men by these presents, that we, William H. Seward,
40 of West Chester County, State of New York, and George F. Seward, of Orange County, same State, as principals, and William E. Walker and Milton W. Vail & Eugene A. Duchamp, of the parish of St. Martin, State aforesaid, as securities, are held and firmly bound their heirs, administrators, and assigns, unto Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme, of the parish of St. Martin, in the full sum of one thousand dollars. Dated at the parish of Saint Martin, State of Louisiana, this 30th of September, A. D. 1875.

Now, whereas said William H. Seward and George F. Seward have obtained from the judge of the third judicial district of the State of Louisiana, in and for the parish of St. Martin, in suit No. of the docket of said court, a mandate or writ of injunction prohibiting Jean Baptiste Comeau, sheriff of said parish, and said Alexandre and Marie Charlotte Declouet, widow Chevalier Delhomme, from selling at public sale on the second day of October, 1875, the Magenta Sugar Plantation and its appurtenances, described in their petition for injunction in suit No. 8030, and in suit No. 8000 of said Alexandre and Marie Charlotte Declouet, against them and said property, if said William H.
41 Seward and George F. Seward will pay and satisfy all damages which the said writ may decree against them, in case said injunction is dissolved, then this obligation shall be null and void, otherwise it shall remain in full force and virtue according to law.

(Signed) WILLIAM H. SEWARD,
" Per EDWARD SIMON,
His Attorney.
" GEORGE F. SEWARD,
" Per EDWARD SIMON,
His Attorney.
" WM. E. WALKER.
" M. W. VAIL.
" EUG. A. DUCHAMP.

Signed in presence of Charles Starr, witness.

Accepted & approved.

(Signed) ALCEDE VEAZY,
Clerk.

(*Original.*)

3rd district court, parish of S' Martin.

W. H. SEWARD & ALS.
vs.
JEAN BTE. COMEAU & ALS. } No. 8030.

The State of Louisiana to Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme, of the parish of S' Martin:

In the name of the State of Louisiana and by virtue of an order from the hon. 3rd judicial district court in and for the parish of S'
42 Martin, dated September 25th, 1875, you are hereby enjoined and prohibited from selling the following described property, to wit:

1st. A tract of land situated in the parish of S' Martin having on Bayou Teche a front of nine arpents, with a depth of forty arpents, and in the depth an opening of about twenty-two arpents, it being the land sold by Alexandre Latiolais to Christophe Chevalier Delhomme, on the 5th of March, 1849, and which then was bounded by land of Narcisse Bergeron and below by that of the said Christophe C. Delhomme.

2nd. A tract of land situated in the parish of S' Martin having a front of nine arpents with a depth of forty arpents and in the depth an opening of about twenty-two arpents, and a superficial area of five hundred arpents, more or less, being a tract of land acquired by Christophe Chevalier Delhomme from Valerien Martin on the 2nd of May, 1849, and which on that date was bounded, to wit, above by lands belonging to the heirs of Marie Nezat, widow Lastie Roy, below by lands of the purchaser and south by the Bayou Teche.

3rd. A tract of land situated in the parish of S' Martin on the right bank of Bayou Teche, having on said bayou a front of five ar-
43 pents with a depth of forty arpents, acquired by Charles Delhommer from M'tress wid. Christophe Chevalier Delhomme by act passed before Simeon Valery Martin on the 17th of April, A. D. 1858, and being a part of the plantation described in the dation in payment made by the said Charles Delhommer to his wife, the present vendor, by act passed before Homere Martin, notary public, on the 29th January, 1867.

4th. Lots 5 & 6 or east half of fractional southeast quarter of section 24, in township 8 south, of range No. 5 east, containing fifty-one $\frac{80}{100}$ acres.

5th. Lots 1, 2, 3, & 4, the SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, and the southwest quarter section of fractional section No. 24, in township 8 south, range 5 east, containing, according to a certificate of 1854, from L. S. Sigur, three hundred and thirty-four $\frac{32}{100}$ acres.

6th. The north half of northeast quarter of section No. 23, in township 8 south, range 5 east, measuring seventy-eight $\frac{4}{100}$ acres.

7th. A tract of concession land measuring one arpent front on a depth of twenty arpents, bounded north by land of Renauld Bergeron, south by wid. Pierre Bergeron, and east by Odile Bernard.

8th. West half of fractional section No. 25, in township 8 south,
44 of range 5 east, containing one hundred and seventy-one $\frac{32}{100}$ acres.

9th. Lot 1 of section No. 26 of township 8 south, range 5 east, measuring twenty-six $\frac{16}{100}$ acres.

10th. The one undivided half of a swamp land measuring half an

arpent front on a depth of twenty, bounded north by land of Pierre Bergeron, south by lands of B. Bergeron, east by lands of Odile Bernard, and west by the Mouton's land.

11th. Lots Nos. 2 & 3 of section 23, in township 8 south, of range 5 east, measuring eighty-two $\frac{72}{100}$ acres. The lands described under Nos. 4, 5, 6, 7, 8, 9, 10, & 11 were purchased by Charles Delhommer from Thoegene Theodule and Theophile Richard, as shown by these acts passed before Simeon Valery Martin on the 27th of October, 1857.

12th. The east half of section 25, in township 8 south, range 6 east, containing one hundred and thirty $\frac{50}{100}$ acres, bounded north by section 24, east by section 30, and south and west by lands then belonging to the said Charles Delhommer and now to his wife, in township 8 south, of range 6 east, which tract was acquired by exchange made between Charles Delhommer and M'tress Pierre Berger, born Marguerite Celine Bergeron, as shown by act passed before Homere Martin, a notary public, on the 25th of October, 1865.

45 13th. The west fractional half of lot No. 4 of fractional section No. 28, and lots 3 & 4 of fractional section No. 34, in township 8 south, range 5 east, containing two hundred and seventy-three $\frac{30}{100}$ acres, which land was bought by Charles Delhommer from Joseph M. Moore by act passed before Yoes D'Avy, recorder of the parish of S' Landry, on the 31st of May, 1858, together with said lands, all the buildings and improvements thereon, five mules, oxen, seven carts, fifty acres of corn, fifteen loads of fodder, seed cane, agricultural implements, four harrow, ten ploughs, until further order from this court.

Witness the Honorable Henry Train, judge of the 3rd judicial district court at S' Martinsville, Parish of S' Martin, this 30th day of September, A. D. 1875.

(Signed) JOS. BORDIER,
D'y Clerk.

Rec'd this writ of injunction October 1st, A. D. 1875, and on the 1st of same month and year duly served a certified copy of same on Alexandre Declouet, by leaving it at his residence with a resident of the house and over the age of fourteen years, also on wid. Chevalier Delhomme, by leaving same at her residence, with her in person, distance necessary travelled about nineteen miles.

46 S. & M., $7.80.

(Signed) J. B. COMEAU,
Sheriff.

R'd & filed October 5th, 1875.

[SEAL.] (Signed) JOS. BORDIER,
D'y Clerk.

3rd j'l district court, parish of S' Martin.

W. H. SEWARD & ALS.
vs.
J. BTE. COMEAU, SH'FF, & ALS. } No. 8030.

To Alexandre Declouet and Marie Charlotte Declouet, widow Chevalier Delhomme, of the parish of S' Martin:

You are hereby cited to be and appear before the 3rd jud'l district court of the State of Louisiana, holding sessions within and for the parish of S' Martin at its next regular term, and comply with the demand contained in the petition of W. H. Seward & als. against you, a

copy of which is hereunto annexed, or file your answer thereto at the office of the clerk of said court at the court house in the town of S' Martinsville, if ten days shall remain between the day of service hereof and the said term of court, but if so many days shall not remain, then in ten days from the service, allowing one additional day for every ten miles from your residence to the place of holding said court.

47 Witness the honorable Henry Train, judge 3d jud'l dis't court at S' Martinsville, parish of S' Martin, this 1st day of October, A. D. 1875.

(Signed) JOS. BORDIER,
Dy Clerk.

Rec'd this October 1st, A. D. 1875, and on the 1st day of same month & year duly served a certified copy of petition and of the within citation on Alexandre Declouet, by leaving same at his residence with a resident of the house and over the age of fourteen it being Paul Declouet, and on the 2nd day of October, '75, duly served a copy of same on wid. Chevalier Delhomme, in person at her residence, distance about 16 miles from the c't house of this parish.

S. & M., $7.20.

(Signed) J. B. COMEAU,
Sheriff.

Rec'd & filed October 5th, 1875.

(Signed) ALCEDE VEAZEY.
Clerk of Court.

District court, parish of St. Martin.

W. H. SEWARD & ALS
vs.
JEAN BAPTISTE COMEAU, SH'RCFF, & ALS. } No. 8030.

Defendants respectfully move that plaintiffs' injunction be dissolved, on the grounds:

1st. That the act of sale from Mrs. Noemie Arbonneaux, the

48 wife of Charles Delhommer, to William H. Seward, junior, contains the fact de non alienando, and that neither he nor George F. Seward can take advantage of the pretended transfer from the former to the latter of the 5th of November, 1872, and which was kept hidden until proceedings were commanded for the seizure & sale of the Magenta plantation to defeat an obligation and rights which were again and again acknowledged by themselves and those acting as their agents by public acts and otherwise.

2nd. The note upon which your respondents have based their enjoined seizure, and their intended sale under said seizure, was taken by them to facilitate said William H. Seward, junior, and prevent the then impending seizure of the property mortgaged to secure the payment of said note, and this to the knowledge and the approval of said Seward and of those who represented themselves as his agents.

3rd. That after the delegation of said note from Mrs. Charles Delhommer to them, they were applied to by said William H. Seward and his supposed agents to obtain an extension of time for the payment of said note, and that far from raising any objection to its validity, they induced your respondents to believe that it would be punctually

49 satified at the expiration of the delay fixed by themselves.

That the applied for extension was granted, an additional one again asked and again allowed, and that, in disregard to their continued indulgence, the promises made and the agreements entered into to obtain that indulgence have been either forgotten or violated.

4th. They aver that the declaration on the part of the plaintiff of a threatened eviction by the government of the United States or of the State of Louisiana is a mere creation of their willing mind, in which, neither when it was written, nor now, they had or have the least reason to believe, but that even if it were otherwise, they have by their acts and representations absolutely bound themselves toward your respondents, and should not be heard in a defence which contradicts their acts, their promises, their representations, and their agreements.

5th. That the pretended seizure by the tax collector of the property, subject to your respondents' mortgage & privilege, was and remains an absolute nullity, the exclusive object of which was to embarrass & defeat the execution of the writ issued in their favor from your honorable court; that from the fact that William H. Seward, junior, owned
50 & own personal property to an amount sufficient to satisfy his taxes, & that none was seized & no curator appointed to represent him, from the advertisement made by the collector of the intended sale of the property which it is alleged he had seized, and from the gross irregularities in said pretended seizure, your respondents believe that the collector's attempt was suggested by those representing themselves as the agents of William H. Seward, junior, as under said advertisement and irregularities no sale could have been legally made.

6th. That the power of attorney referred to in plaintiffs' petition was sent for the objects therein expressed, and that it does not constitute Edward Simon, esquire, an agent with power and authority to represent the said William H. Seward, junior, in such a proceeding as that which he has enjoined. That, besides, the evidence of that alleged agency was never shown to them, and from what they have heard of it was but an additional snare to destroy a legitimate obligation, or at least indefinitely retard its execution.

7th. That the assertions that in her suit for a separation of property, Mrs. Charles Delhommer did not have, and was without the authorization of the court before which she had brought her action, and
51 that no notice of seizure was given as required by the "Code of Practice," are contradicted by an entry on the minutes of your honorable court of the 14th of September, 1866, and by the return made by the sheriff of the parish of St. Martin.

8th. That when he received notice of the seizure and intended sale of the property into lots, the attorney appointed to represent William H. Seward, junior, did not object to the mode of selling said property, and, on only that account, and for only the advantage and benefit of said Seward, the sheriff caused the land to be subdivided in accordance with the constitution and laws of the State, but that, though this course did not afford any cause for an injunction, they shall certainly, unless prevented by another injunction, comply with the hardy wish expressed by plaintiffs.

Your respondents aver that the allegations on which plaintiffs have based their injunction cannot be verified by evidence and are as repugnant to law as they are to equity. That said injunction surpasses in extravagance & frivolity every one of those which have so largely contributed to destroy the credit of our parish, and that unless restrained by penalties proportioned to the abuse, the execution of every
52 decree of court shall here become impracticable, or so difficult

and expensive as to deter creditors from attempting to enforce the most legitimate obligations or exercise the most incontestable rights.

They aver that plaintiffs' unjustifiable course has caused them damages in the sum of at least one thousand dollars, including their counsel's fee, which they are already liable for.

They therefore respectfully pray that plaintiffs' injunction be dissolved and that they be condemned in solido to pay to your respondents as damages the sum of one thousand dollars and the costs of this suit.

They further pray for general relief, and as in duty bound.

(Signed) DE BLANC & FOURNET,
Of Counsel for Respondents.

R'd & filed November 9th, 1875.
(Signed) JOS. BORDIER,
D'y Clerk.

3rd judicial d't c't, St. Martin Parish.

W. H. SEWARD & ALS.
vs. } No. 8030.
J. B. COMEAU, SH'FF, & ALS.

Plaintiffs amending their original petition, pray that the above entitled cause be tried by a jury, and for general relief.

(Signed) EDWARD SIMON,
Att'y of Pl'ffs.

53 R'd & filed November 10th, '75.
(Signed) ALCEDE VEAZEY,
Clerk.

To the honorable the judge of the third judicial district of the State of Louisiana in and for the parish of St. Martin:

The petition of George F. Seward, residing actually as consul general of the United States at the city of Shanghai, China, but a citizen of the State of New York, and of William H. Seward, a citizen also of the State of New York, residing in Westchester County, with respect represents:

That your petitioners are plaintiffs in suit No. 8030 of your honorable court, and Alexandre Declouet and Mrs. Chevalier Delhomme, Marie Charlotte Declouet, widow, and Jean Baptiste Comeau, sheriff nominally, and the defendants residing in the parish of St. Martin, State of Louisiana.

That amount in dispute exceeds five hundred dollars, being for the sum of five thousand eight hundred and thirty-three $\frac{33}{100}$ dollars, with 8 p. c't interest from March 5th, 1870, subject to a credit of eight hundred dollars, and for one thousand dollars damages.

54 That inasmuch as the above-mentioned suit is a controversy between your petitioners, citizens of the State of New York, and defendants, citizens of the State of Louisiana, now pending before your honorable court between citizens of the State where the suit is brought and the citizens of another State of the United States, and the matter in dispute exceeds the sum of five hundred dollars exclusive of costs, your petitioners as plaintiffs have the right by virtue of the act of Congress of March 2nd, 1867, amending the act entitled "An act for the removal of causes in certain cases from the State courts," approved July 27th, 1866, upon proper affidavit required by law, to petition your honorable court for the removal of said suit No. 8030, entitled William H. Seward & als. *vs.* J. B. Comeau, sheriff, & als., from your

honorable court to the next circuit court of the United States to be holden in the district where the said suit is pending upon your petitioners giving good and sufficient surety for entering into said court in such an amount as required by law and your honorable court.

Your petitioners further represent that they petition your honorable court for the removal of said suit from your honorable court to said next circuit court of the United States, to be held in the district where
55 it is pending, because they, as plaintiffs, have reason to, and do, believe, that from prejudice and local influence they will not be able to obtain justice in such State court of the State of Louisiana.

Wherefore, your petitioners pray that, upon furnishing bond, with good and sufficient surety, conditioned as the law directs, said suit No. 8030 of your honorable court be removed into the next circuit court of the United States, to be held in the district where said suit is pending, upon giving security in the amount fixed by law or by your honorable court, and for general relief.

(Signed) EDWARD SIMON,
Att'y of Petitioners.

Before me, the undersigned authority, personally came and appeared Edward Simon, attorney of William H. Seward and George F. Seward, petitioners in the foregoing petition, who, after being duly sworn, says that he is the attorney of said petitioners, who are absent from the Parish of S' Martin, and State of Louisiana, and that all the allegations and facts in the foregoing petition are true and correct to the best of his knowledge and belief.

(Signed) EDWARD SIMON,
Att'y of G. F. & W. H. Seward.

Sworn to and subscribed before me this 15th of November, 1875.
(Signed) ALCEDE VEAZEY, *Clerk.*

56 R'd & filed November 15th, '75.
(Signed) ALCEDE VEAZEY, *Clerk.*

District court, Parish of S' Martin.

WILLIAM H. SEWARD & AL. *vs.* J. B. COMEAN, SH'FF & ALS. } No. 8030.

The defendants in the case entitled as above respectfully pray that the motion made by plaintiff for a removal of said case to the circuit court of the United States be denied, on the grounds:

1st. That the affidavit is not such as the law requires.

2nd. That since the institution of this suit plaintiffs have parted with their title to the said land sought to be subjected to the enforcement of defendants' vendor's mortgage and privilege.

3rd. That said plaintiffs are now, and at and previous to their motion for the removal, as aforesaid, were without interest in said controversy, as their entire interest therein has passed to Charles Starr, a citizen of the State of Louisiana, and a resident of the Parish of S' Martin.

They further state that the evidence of plaintiffs' transfer of their interest in this controversy is in the hands of either Edward Simon, esq., or Charles Starr, of the Parish of S' Martin, and they therefore pray

that said parties be ordered to produce in open court on the 17th
57 of November, 1875, the evidence of said transfer.
And for general relief and as in duty bound.
(Signed) DE BLANC & FOURNET,
Of Counsel for Defendants.

R'd & filed November 16th, 1875.
(Signed) JOS. BORDIER,
Dy. Clerk.

District court, parish of S' Martin.

WM. H. SEWARD & ALS.
vs. } No. 8030.
J. B. COMEAU, SHERIFF & ALS.

As additional grounds against the application for a removal of this case from the State to the federal court defendants respectfully allege:
1st. That there is already a decree rendered in said case from which plaintiffs can seek relief but in the supreme court of the State.
2nd. That said decree has already been partly executed, and that the property levied upon under the same is now in the possession of a State officer.
3rd. That plaintiffs have applied not for the removal of an entire suit, but for exclusively the removal of a portion of said suit, and that such an application is not in accordance with the law of Congress, and should not be allowed by your honorable court.
58 They therefore pray as in their original answer to the rule for a removal, and for general relief.
And as in duty bound.
(Signed) DE BLANC & FOURNET,
Of Counsel for Defendants.

Filed November 26th, '75.
(Signed) ALCEDE VEAZEY,
Clerk of Court.

Third Dt. Ct., S' Martin.

WILLIAM H. SEWARD & ALS.
vs. } No. 8030.
J. B. COMEAU, SHERIFF & ALS.

Plaintiffs beg leave to except to defendants' motion, in rule filed on the 2nd day of May, 1876, in above suit, against the application of plaintiffs for the removal of it from this court to the United States court on the ground:
That said defendants have no right to interfere and oppose said application, or contest the validity of the same, the same being granted by law of Congress to plaintiffs citizens of another State as a matter of right.
On the further ground that after filing of such application by plaintiffs the State court can take no further steps in the case or entertain no other proceeding, it' action being confined to the granting and refusal of the same upon the face of the papers.
59 Wherefore plaintiffs pray that said rule or motion be disregarded & dismissed at defendant's costs, and for general relief.
(Signed) EDWARD SIMON,
Att'y of Pl'ffs.

R'd and filed May 3rd, 1876.
(Signed) ALCEDE VEAZEY, *Clerk.*

Third judicial district, S' Martin.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF & ALS. } No. 8030.

Plaintiffs beg leave to except to the motion or rule filed on the 26th of November, 1875, against the application for a removal to the United States court by defendants for the reason that defendants have no right to proceed in the premises and no right to oppose the application of *defendants* citizens of another State for a removal of said suit to the United States court under the amendatory act of Congress of the 2nd of March, 1867, and for the reason that, after the filing of the application to remove, the State court can take no further steps, and entertain no other proceeding in the case, and must confine its action to the granting of the same, or refuse it on the face of the same without delay.

60 Wherefore plaintiffs pray that said motion or rule be disregarded and rejected at defendants' costs, and for general relief.

(Signed) EDWARD SIMON,
Att'y of P'ffs.

R'd and filed May 3rd, 1876.
(Signed) ALCEDE VEAZEY, *Clerk.*

Third judicial district, S. Martin.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF & ALS. } No. 8030.

Plaintiffs in the above-entitled cause beg leave to except to the motion or rule filed by defendants, on the 16th of November, 1875, against the application of plaintiffs for the removal of said suit to the United States Court, on the ground—

That defendants are without any right to oppose or to contest in your Honorable Courts the validity of proceedings for removal granted to plaintiffs as a matter of right under the amendatory act of Congress of the U. S., of March 3rd, 1867.

And on the further ground that the State Court after the filing of the application in due form for such removal can take no further step or entertain in the case no further proceedings, and must grant the

61 application or refuse it upon the face of the application filed.

Wherefore plaintiffs pray that said rule or motion be disregarded and dismissed at defendants' costs and for general relief.

(Signed) EDWARD SIMON,
Att'y of P'ffs.

R'd & filed May 3rd, 1876.
(Signed) ALCEDE VEAZEY, *Clerk.*

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF & ALS. } No. 8030.

Plaintiffs in above-entitled suit wishing to procure the testimony of George F. Seward, residing at Shanghai, China, and of William H. Seward, of Westchester County, State of New York, hereby show that hey expect by said testimony to disprove the allegations contained in

defendants' answer, and to prove that William H. Seward is the identical person to whom the Magenta plantation was sold by Noemie Arbonneaux, Mrs. Charles Delhommer; that George Seward acquired the same subsequently for a valuable consideration; that he never kept hidden and never intended to keep hidden the private act of sale of
62 William H. Seward to him; that they never knew it had not been recorded; that they never knew that proceedings were to be commenced by Alexandre Declouet & Mrs. Chevalier Delhomme, except by information conveyed of short time previous by letter to William H. Seward; that they never intended to invalidate any valid allegations held by said parties against the Magenta by any omission to record said private act or by the act itself; that they never knew that Alexandre Declouet & Mrs. Chevalier Delhomme had become transferee by public act of any notes held by them against the Magenta; that no understanding ever existed between them and said defendants as to any impending seizure, and if any there was the exact nature of said understanding and the persons with whom it was had; that they never applied to defendants for any extension of time themselves, and that they authorized no one so to do for them; that they never had, personally, any inducements so to do to defendants; that they were not aware at the time of said sales of any defects in the title in the claim of titles to the Magenta; that they never knew some of the tracts of land conveyed were without patents from the government; that they never knew until found out by their attorney
63 that the judgment of Noemie Arbonneaux vs. Charles Delhommer, her husband, was not a valid one, and that the proceedings under the same, and that said testimony & facts growing out of the pleading at issue are material to them in the case.

Wherefore they pray that commissions to take said testimony be granted, and a return day fixed for the same.

(Signed) EDWARD SIMON,
Att'y of Petitioners.

Before me, the undersigned authority, personally came and appeared Edward Simon, attorney of plaintiffs in above-entitled cause, who, after being duly sworn, says that William H. and George F. Seward, plaintiffs in above-entitled suit, are absent from the Parish of S. Martin, State of Louisiana, and that the facts and allegations in the above motion are true to the best of his knowledge and belief.

(Signed) EDWARD SIMON,
Att'y of Plaintiffs.

Sworn to and subscribed before me this 12 of November, 1875.
(Signed) ALCEDE VEAZEY, *Clerk.*

R'd & filed November 12th, '75.
(Signed) ALCEDE VEAZEY, *Clerk.*

3d District Court, St. Martin Parish.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF & ALS. } No. 8030.

64 Defendants having made, through counsel, a motion to file their answer in the case, and fixed the same for trial for the 17th instant, plaintiffs object to the said motion on the ground that the pres-

ent pretended November term of the said court, fixed by law on the first Monday of November, being the first day of said month, had lapsed on the succeeding Monday of said month, the eighth, for want of proper written order from the judge of the 3rd district court to the sheriff of said parish to adjourn the court to the eighth of November; the written order upon which the sheriff acted, stating to him to adjourn the court on the eighth of November, having been changed upon its informal context by his honor, the judge, on the minutes of the court on the eighth of November, 1875, by the addition to the order of the words, to be holden, after the word court, which gives to understand that the sheriff was ordered simply to adjourn a term of court to be holden on that day, and not that he was to adjourn the regular term of the court for November to any other day preceeding the next regular session;

which objections being overruled by his honor, the presiding judge,
65 on the ground that the original order was correct, and that he had the right nunc pro tunc to correct the entry on the minutes of the court setting forth the original order, plaintiffs by their counsel took this bill of exception to said ruling presented to the judge for his signature before trial & judgment.

The objection that the court had lapsed is overruled on the ground that my original order to the sheriff to adjourn the court, as ammended and spread on the minutes was entirely sufficient, that in obedience to said order the district court for this parish was regularly adjourned by the sheriff to the 8th of November, 1875 (as on the 1st I was called to answer mandamus against me before the honorable the supreme court to be holden on the said 1st day of November in the city of New Orleans), that on the 8th day of the same month the presiding judge, the district attorney, the clerk, the sheriff and his deputies, the members of the bar of this parish, and some of the adjoining parishes & district, and the jurors summoned for this term of court, were all present in the court-house at the hour fixed by the adjournment. That though the original order could not be and was not misunderstood, as it was strictly
66 complied with by every one which it concerned, the undersigned had it completed, nunc pro tunc, by the additional words, to be holden, after the words "adjourned the court," with the view of avoiding in the future any further misconstruction of the same.

(Signed) HENRY TRAIN,
Judge 3rd Jud. Dist.

R'd & filed November 11th, 1875.
(Signed) ALCEDE VEAZEY, *Clerk.*

3rd district court, S. Martin P'h.

W. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF & ALS. } No. 8030.

Plaintiffs in above entitled cause hereby show that they are entitled to commissions to examine George F. Seward, consul-general of the United States at Shanghai, China, and W. H. Seward of Westchester County, New York, witnesses in their behalf, whose testimony is material for them in the cause.

Wherefore they pray that the commissions directed to proper authority to take depositions of said witnesses be ordered to issue and a day fixed for the return thereof & for general relief.

(Signed) EDWARD SIMON,
Att'y of P'ffs.

67 Before me the undersigned authority personally came and appeared Edward Simon, attorney of plaintiffs in the above-entitled suit, who after being duly sworn says that he is the attorney of said plaintiffs; that said plaintiffs are absent from the parish of S' Martin, State of Louisiana, and that, to his best knowledge & belief, the testimony of George F. Seward and William H. Seward, the first of Shanghai, China, and the second of West Chester Co., New York, witnesses in their behalf, which he wishes to obtain, is material to them for the trial of said cause.

(Signed) EDWARD SIMON, *Att'y.*

Sworn to & subscribed before me this 11th November, 1875.

(Signed) ALCEDE VEAZEY,
Clerk of Court.

R'd & filed November 11th, 1875.

(Signed) JOS. BORDIER,
D'y Clerk.

District court, parish of S' Martin.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SHERIFF, & ALS. } No. 8030.

The defendants, in the case entitled as above, respectfully pray that plaintiffs' application for the removal of said case from the State in the federal court be dismissed and rejected at his costs for an addi-
68 tional reason that if at any previous time plaintiff was entitled to any such removal, which is specially denied, that right has been and stands lost by his for this, because the certified transcripts of the process, pleadings and papers generally appertaining to said case have not been filed in the United States court within the time prescribed by the federal statutes, after the filing of the petition, affidavit and bond for removal, nor at any time since said filing. He further prays for general relief, and as in duty bound.

(Signed) DEBLANC & FOURNET,
Of Counsels for Defendants.

R'd & filed May 2nd, 1876.

(Signed) ALCEDE VEAZEY,
Clerk D't Court.

Statement of facts.

District court, parish of S' Martin.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

Defendants' evidence in opposition to application for removal.

1st. Sale of Wm. H. Seward to George F. Seward, copy to be furnished.

2nd. Act of sale from George F. Seward to Charles Starr, under private signature.

3rd. The signature to said private act is admitted to be genuine.

4th. File of suit of Alexandre Declouet & als. vs. Wm. H.
69 Seward, being No. 8000 of the docket of the dist. court, with the proceedings, executions and returns therein.

5th. It is admitted that no copies of the application for a removal were filed in the Federal court at any time, because, upon objections filed by defendants to the application for a removal no order therefore was granted by this court.

Plaintiffs' evidence in opposition to application to removal:

1st. Letter from George F. Seward to E. Simon.

Edward Simon, esqr., sworn, says that the letter of George F. Seward to him was received at the same time that he has received the act from said Seward to Charles Starr introduced already in evidence by defendant; and that said act, under the private signature of George F. Seward, never passed out of deponent' hands to Mr. Starr, and that no conditions mentioned in the letter offered in evidence have been fulfilled.

Cross-examined says (defendants' evidence):

Z. T. Fournet, esqr., sworn, says: At the time that Judge Simon came to the office of De Blanc & Fournet to ask from "General" Alexandre Declout, through us, for an extension of time, that he had
70 in hands the act of sale from George F. Seward to Charles Starr, Judge Simon stated that if the extension of time was granted, that said property now belonging to Charles Starr, said Starr could pass a vente arriméré to said Declouet.

Evidence closed & filed May 4th, 1876.

(Signed) ALCEDE VEAZEY, *Clerk.*

Know all men by these presents that we, the undersigned contradicting parties, George F. Seward, domiciliated in the county of Orange, State of New York, on the first part, and Charles Starr, of the parish of S' Martin, State of Louisiana, of the second part, have entered and closed the following contract of sale, to wit:

The party of the first part, George F. Seward, sells, conveys, and delivers to the party of the second part, Charles Starr, for the benefit of himself, his heirs and assigns, without warranty, his property known as the Magenta plantation, situated in the parish of S' Martin, on the west side of the river Teche, being the same sugar plantation which was sold to William H. Seward on the 5th day of March, 1870, by Noemie Arbonneaux, wife of Charles Delhommer, g. x. s., of same parish, per act passed *passed* before Manuel Ducross, notary of the city of
71 New Orleans, which contains a full description of the property and its boundaries addopted and referred to herein for identification of the object sold, and, together with said plantation, all the improvements standing and erected thereon, such as sugar-house, steam-engine, laborers' quarters and houses, dwelling-house, stable, &c., &c., and all the movables attached thereto made real by destination, such as mules, implements of husbandry, and all movable property on said plantation belonging to said George F. Seward.

In consideration of the transfer of above mentioned property, the party of the second part, Charles Starr, having contracted to pay a part of the price cash in hand, has paid to said party of the first part the sum of five thousand dollars, which he acknowledges to have been received in cash; and for and in satisfaction of the balance due, the party of the second part assumes to pay in principal, interests, and costs two promissory notes of hand, subscribed by William H. Seward, in favor of said Mrs. Noemie Arbonneaux, as part of the price stipulated by him for the purchase of the property, as per act above mentioned, to whomsoever the same may be due and to whomsoever
72 may be the holders thereof, and also assumes to pay all the other

debts and liabilities outstanding against the said Magenta plantation.

Signed by the party of the first part on the twenty-ninth day of September, A. D. 1875, at Shanghai, China, and by the party of the second part on the day of , in the parish of S' Martin, in the State of Louisiana.

(Signed) GEORGE F. SEWARD.

R'd & filed May 4th, 1876.

(Signed) ALCEDE VEAZEY, *Clerk.*

SHANGHAI, *Sept.* 29, 1875.

MY DEAR JUDGE SIMON: Please find herewith a conveyance of the plantation near Breaux bridge to Mr. Starr. I have written to Mr. Starr to-day, & state the conditions upon which I make this conveyance; he will give the letter to you, and I shall be obliged if you will hand the conveyance to him when he has complied with the conditions of my letter. I trust that he will be fortunate yet with the place, and may so suc'eed as to *score* me from any further responsibility. I fear that he will have an up-hill job.

With my warmest regard, and those of my wife, to you and all your family,

Believe me your warm friend,

(Signed) GEORGE F. SEWARD.

73 Hon. E. SIMON,
S' Martinsville.

UNITED STATES OF AMERICA,
The State of Louisiana, Parish of Orleans,
City of NewOrleans:

Deposition of witness taken and subscribed before me, W. H. Holmes, second justice of the peace for the parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such on the sixteenth day of November, A. D. eighteen hundred and seventy-five, between the hours of twelve o'clock m., and 3 o'clock p. m., of said day, at my office, No. 31 Commercial Place, in the city of New Orleans, parish of Orleans and State of Louisiana, in pursuance to a commission hereto annexed, and to be read as evidence in a certain cause now pending in the 3rd district court, parish of S' Martin, wherein W. H. Seward & als. are pl'ffs, and J. B. Comeau, sheriff, & als. def'ts, John Ray, witness, on the part of the plaintiffs.

Witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn according to law to testify the truth, the whole truth, and nothing but
74 the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say, and answers as follows, to wit:

R'd & filed. D't c't, Nov. 20th, 1875.

(Signed) JOS. BORDIER,
D'y Clerk.

The State of Louisiana district court for the parish of S' Martin to Wm. H. Holmes, third justice of the peace for the parish of Orleans, State of Louisiana, greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine Messrs. John A. Breaux, register of the United States land office, and register of the State land office of New Orleans, in a certain suit now pending in our court, in which W. H. Seward & als. are plaintiffs, and J. B. Comeau, sheriff, & als., are defendants, on the part of said plaintiffs. Therefore we desire you at certain times and places, by you to be appointed for that purpose, to cause the said witness' to come before you; that you then and there examine them upon their oath, first taken before you upon the Holy Evangelists; that you reduce the said examination to writing, and when you shall so have taken the same, you
75 send it closed up under your seal to us in our said court, at the court-house in the town of S' Martinsville, parish of S' Martin, on or before the 17th of November, 1875, and have you then and there this writ.

Witness the honorable Henry Train, judge of said court, this 12th day of November, A. D. 1875.

(Signed) JOS. BORDIER,
D'y Clerk.

R'd & filed. D't c't, Nov. 20th, '75.
(Signed) JOS. BORDIER,
D'y Clerk.

3rd district court, parish of S' Martin.

W. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

Interrogatories to John A. Breaux, register of the United States land-office at New Orleans, and to the register of the State land office, witness' in behalf of plaintiff.

To the register of the State land-office and to John A. Breaux, register of the U. S. land-office:

Are you the register of the State land-office? And are you not the register of the United States land office at New Orleans, State of Louisiana?

2nd. If yea, please state whether or not the surveys of the
76 United States or State contains any lands described as lots 5 & 6, or east half of fractional section southeast quarter of section 24, in township 8 south, range No. 5 east, containing $\frac{80}{100}$ acres; lots 1, 2, 3 & 4, the southwest $\frac{1}{4}$ of northwest $\frac{1}{4}$, the southwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$, and the southwest $\frac{1}{4}$ section of fractional section No. 24, township 8 south, range 5 east, containing, according to a certificate of 1854, from L. S. Sigur, $334\frac{32}{100}$ acres; the north $\frac{1}{2}$ of northwest $\frac{1}{4}$ of section No. 23, in township 8 south, range 5 east, containing $178\frac{4}{100}$ acres; lot 1, of section No. 26, of township 8 south, range 5 east, containing $26\frac{16}{100}$ acres; the west $\frac{1}{2}$ of fractional section No. 25, in township 8 south, range 5 east, containing $171\frac{32}{100}$ acres; lots No. 2 & 3, of section 23, in township 8 south, range 5 east, measuring $82\frac{72}{100}$ acres; the east half of section 25, in township 8 south, range 6 east, containing $130\frac{50}{100}$ acres, bounded

north by section 24, east by section 30; the west fractional half of lot No. 4, of fractional No. 28, and lots 3 & 4 of fractional section No. 34, in township 8 south, range 5 east, containing 273 $\frac{36}{100}$ acres.

3rd. If you say yea, that there are any such tracts of land described in survey in your office, please give the names of those in whose favor they were entered, the description of said entries, and state whether or not patents have been issued therefor, and to whom.

77 Please state whether or not, if entries of said lands have been made in your office, if any of said entries have ever been cancelled.

5th. Please give a correct description of lands entered by Jos. M. Moore, if any have been entered by him in township 8 south, range 5 east; whether or not the description of the last tracts mentioned in the second interrogatory corresponded to that of lands entered by said Moore.

(Signed) EDWARD SIMON,
Att'y of Plaintiffs.

NOVEMBER 10th, 1875.

Reserving all legal objections to the foregoing interrogatories and evidence sought to be adduced under said interrogatories, service of the foregoing interrogatories is hereby accepted.

(Signed) DE BLANC & FOURNET,
Of Counsel for Defendants.

R'd filed D. ct., Nov. 20th, 1875.
(Signed) JOS. BORDIER,
D'y Clerk.

3rd jud'l dist. court, parish of S' Martin.

W. H. SEWARD & ALS. *vs.* J. B. COMEAU, SH'FF, & ALS. } No. 8030.

Personally came and appeared before me, the undersigned authority, John Ray, one of the witnesses named in the annexed interroga-

78 tories & order, who, being by me first duly sworn, doth depose and answer as follows to the int. 1st:

I am register of the State land-office. The maps in this office of township eight south, of range five east, in the southwestern land-district, show all the lots or lands mentioned in interrogatory, except the west fractional half of lot No. 4 of fractional section 28; said frac'l section contains only 7 $\frac{80}{100}$ acres.

Lots 5 & 6, sec. 24, contains 51 $\frac{80}{100}$ acres.

Lots & lots 3 & 4, sec. 34, contains only 20 $\frac{28}{100}$ acres.

Lots 5 & 6 or frac'l E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 24, entered by Theodile and Theogene Richard; the N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ sec. 23, entered by Theogene Richard; no patent issued. The W. $\frac{1}{2}$ of f'l sec. 25 entered by Theophile Richard; no patent issued.

Lot 1, sec. 26 entered by Noah H. Phelps; no patent issued.

Lots 2 & 3 of sec. 23 entered by Noah H. Phelps; no patent issued.

E. $\frac{1}{2}$ of f'l sec. 25 entered by A. Stelly; no patent issued.

Fra'l sec. 28 entered by Jos. M. Moore; no patent issued.

Lots 3 & 4 of sec. 34 entered by Jos. M. Moore; no patent issued.

All of the above entries in T. 8 S., R. 5 E., none of said entries have been cancelled.

79 Joseph M. Moore entered the following land in T. 8 S., R. 5 E., and none other, to wit, frac'l sec. 5, lot 6 of sec. 6, W. ½, and lot 4 of sec. 27; frac'l sec. 28 & lots 3 & 4 of sec. 34, containing 349 $\frac{84}{100}$ acres entered per cirt 1861, N. S. 26 June, 1865; lots 3 & 4 sec. 34 correspond with Moore's entry; W. f'l ½ of lot 4 of f'l sec. 28 does not correspond with Moore's entry.

(Signed) JOHN RAY.

Sworn to & subscribed before me this 16th day of Nov., 1875.

(Signed) WM. H. HOLMES,
Second Justice Peace Parish Orleans.

This is to certify that the other witness, John A. Breaux, is not of the city, as will appear by the constable's return on the subpœna hereto annexed & made part hereof.

(Signed) WM. H. HOLMES,
Second Justice Peace Parish Orleans.

Subpœna.

Third district court, parish S' Martin, Louisiana.

THE STATE OF LOUISIANA:

Second justice's court, parish of Orleans, W. H. Holmes, justice.

W. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

NEW ORLEANS, *Nov. 16th*, 1873.

To Mr. John A. Breaux, register U. S. land office, greeting:

80 You are hereby commanded to appear before the honorable the second justice's court on Tuesday, the 16th day of November, 1875, at 3 o'clock p. m., to testify and give evidence in relation to this case. Fail not under penalty of a fine. Office cor. S' Charles st. & Commercial Place. Entrance 31 Commercial Place.

(Signed) WM. H. HOLMES,
Second Justice of the Peace.

Received, New Orleans, November 16th, 1875, and on the same day, month, & year went at the commercial domicil of the witness, John E. Breaux, at the U. S. custom house, on Canal street of this city; then & there, after due inquiry & search, found that the said John E. Breaux was absent from the city.

(Signed) P. HECHT,
D'y Const. 2d J. C.

Mr. John E. Breaux, the register of the office, is at present absent from the city, and is expected on or about the 1st December next.

(Signed) THOS. J. TULLY,
Clerk U. S. Land Office.

THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

To W. H. Holmes, second justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the city of New Orleans, in the parish of Orleans, and State
81 of Louisiana, do hereby certify and make known that the fore-

going deposition of John Ray was taken before me on the sixteenth day of November, A. D. eighteen hundred and seventy-five, at the time and place in the caption thereof mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing by himself, and by the said deponents, respectively, sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof I, W. H. Holmes, second justice of the peace for the parish of Orleans aforesaid, do hereunto set my hand at the city of New Orleans, in the State of Louisiana, this 16th day of Nov., A. D. eighteen hundred and seventy-five.

(Signed) WM. H. HOLMES,
Second Justice of the Peace for the Parish of Orleans.

Costs:

Commissioner's fee, six dollars..... $6.00
Constable's fees notices of subpœna, one dollar..... $1.00

Paid by Chas. Stein $7.00

(Signed) W. H. HOLMES,
Justice of the Peace for the Parish of Orleans.

Removal bond.

Know all men by these presents that we, William H. Seward
82 and George F. Seward, of the State of New York, & Orange County & Westchester County, as principal, and Milton W. Vail, of the parish of S' Martin, Louisiana, & Eugene A. Duchamp, of same parish of S' Martin, as sureties, are held and firmly bound, their heirs, executors, & assigns, in solido, unto Alexandre Declouet, Marie Charlotte Declouet, & J. B. Comeau, sh'ff, in the sum of one thousand dollars, dated at the p'h of S' Martin, Louisiana, this 24th of May, 1876.

Now, whereas the above bounden William H. & George F. Seward, as principals, have obtained from the 3rd judicial district court for said parish an order upon their application to remove to the next circuit court of the United States for the district where the suit is pending suit No. 8030 of the docket of said court, entitled William H. Seward & als. vs. J. B. Comeau, sh'ff, & als., wherein Alexandre Declouet & Marie Declouet are defendants; now, if the said W. H. & G. F. Seward will enter into said circuit court, on the first day of its session, copies of said suit and of all pleadings, testimony, and other proceedings in the cause, then this obligation to become null & void, otherwise to remain in full force and effect.

(Signed) WILLIAM H. SEWARD,
Per E. SIMON, *Att'y.*
83 (Signed) GEORGE F. SEWARD,
Per E. SIMON, *Att'y.*
(Signed) M. W. VAIL.
" EUGENE A. DUCHAMP.

Approved. (Signed) ALCIDE VEAZEY, *Clerk.*

(Endorsed:)
Approved this 24th of May, 1876.
(Signed) HENRY TRAIN,
Judge 3rd Jud'l Dist.

R'd & filed May 24th, '76.
(Signed) ALCEDE VEAZEY,
Clerk of Court.

3rd district court, S' Martin P'h.

WILLIAM H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

On the hearing of objections of defendants' counsels in open court, on the trial thereof, against the application of the plaintiffs in the above-entitled suit, to have the same removed into the next circuit court of the United States to be held in the district where same is pending, this court being of opinion that the objections are untenable and that plaintiffs are entitled to the right claimed, it is therefore ordered, adjudged, & decreed that said suit No. 8030, and all papers and documents appertaining thereto, be and stands hereby removed, at the instance and application of William H. Seward and George F. Seward, from this the third judicial district court of the State of Louisiana, in and for
84 the parish of S' Martin, to the circuit court of the United States, setting at New Orleans in the district where said suit is pending, upon said William and George F. Seward good and sufficient surety for entering into said court, as the law directs, in the sum of one thousand dollars.

Done, read, and signed in open court at the town of S' Martinsville, parish of Saint Martin, the 24th day of May, 1876.

(Signed) HENRY TRAIN,
Judge 3rd Jud'l Dist.

R'd & filed May 24th, '76.
(Signed) ALCEDE VEAZEY,
Clerk of Court.

STATE OF LOUISIANA.

District court, parish of S' Martin.

W. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

To Charles Starr, of the parish of S' Martin:

You are hereby summoned to be and appear before said court instanter this 17th inst., at 10 o'clock a. m., to testify on behalf of defendant in the above-entitled suit from term to term until finally discharged, and herein fail not under the penalty of the law.

S' Martinsville, November 17th, A. D. 1875.

85 By order of the court.
(Signed)
JOS. BORDIER,
D'y Clerk.

Received November 17th, 1875, and on the same day, month, & year served a copy of the original on the reverse hereof personally on Charles Starr.

S. & M. $ .70.
(Signed)
L. P. BREAUT,
D'y Sh'ff.

R'd & filed Nov. 17th, '75.
(Signed) ALCEDE VEAZEY, *Clerk.*

STATE OF LOUISIANA:

3rd district court, parish of S' Martin.

W. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

To Charles Starr & J. B. Comeau, of the parish of S' Martin:

You are hereby summoned to be and appear before said court, on Wednesday, the 17th inst., at 10 o'clock, a. m., to testify on behalf of plaintiff in the above entitled suit from term to term until finally discharged, and herein fail not, under the penalty of the law.

St. Martinsville, November 12th, A. D. 1875.

By order of the court.

(Signed) JOS. BORDIER,
D'y Clerk.

Re'd the within subpœna Nov. 12th, A. D. 1875, and on the 14th of same month & year duly served a certified copy of same on
86 Charles Starr at S' Martinsville, and accepted service thereof myself.

S. & M. $ .70.

(Signed) J. B. COMEAU, *Sh'ff.*

R'd & filed November 18th, 1875.

(Signed) JOS. BORDIER,
D'y Clerk.

STATE OF LOUISIANA:

District court, parish of S' Martin.

WM. H. SEWARD & ALS.
vs.
J. B. COMEAU, SH'FF, & ALS. } No. 8030.

To Edward Simon, esq., Taylor Daspit, and Charles Delhommer, of the parish of S' Martin:

You are hereby summoned to be and appear before said court on Wednesday the 17th inst., at 10 o'clock a. m., to testify on behalf of defendants in the above entitled suit from term to term, until finally discharged, and herein fail not, under penalty of the law.

S' Martinsville, November 12th, A. D. 1875.

By order of the court.

(Signed) JOS. BORDIER,
D'y Clerk.

Rec'd the within summons Nov. 15th, A. D. 1875, and on the 16th of same month and year served a certified copy of same on Edward Simon & Taylor Daspit personally at their residence.

S. & M. $1.20.

(Signed) J. B. COMEAU, *Sh'ff.*

87 R'd & filed Nov. 17th, '75.

(Signed) ALCEDE VEAZEY, *Clerk.*

* * * * * * *

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT AND DISTRICT OF LOUISIANA.

Notice of motion to remand to the State court.—(*Filed May 12th*, 1877.)

WILLIAM H. SEWARD ET ALS.
vs.
JEAN BAPTISTE COMEAU, SHERIFF, ET AL. } No. 7950. An injunction.

To C. T. Bemis, esq., solicitor for plaintiff:

Take notice that the court will be moved in the above entitled cause on behalf of the defendants, on the twenty-third day of May, 1877, at 11 o'clock a. m., or so soon thereafter as counsel can be heard, to remand the said cause to the State court from whence it was brought into this court, on the ground that said suit does not really and substantially involve a dispute properly within the jurisdiction of the said
88 circuit court; that this suit is simply, a suit to enjoin the proceedings and process of the third judicial district court in and for the parish of St. Martin, a State court, which has the mortgaged property in the possession of the sheriff, its own officers, in another cause in said State court, bearing the number 8000 of said third judicial district court for the parish of St. Martin, and this court has no jurisdiction over the sheriff or the process of said State court, and is expressly prohibited from enjoining a proceeding in a State court, which is sought to be done in this case.

(Signed) A. L. TUCKER &
MERRICK, RACE, & FOSTER,
Sol's for Defendants.

A. L. Tucker, being duly sworn, says that he this day delivered a true copy of the above notice on C. T. Bemiss, esq., counsel for plaintiffs in the above suit in person.

(Signed) A. L. TUCKER.

Sworn to and subscribed before me this 12th May, 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

89 *Submission of rule to remand.—Extract from the minutes. April term*, 1877.

NEW ORLEANS, *Friday, May 25th*, 1877.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

W. H. SEWARD & AL.
vs.
J. B. COMEAU, SHERIFF, & AL. } No. 7950.

The rule to remand said cause was argued and submitted by E. T. Merrick, attorney for defendant.

Rule to remand denied.—Extract from the minutes of June 16th, 1877.

W. H. SEWARD ET ALS.
vs.
J. B. COMEAU, SHERIFF, ET ALS. } No. 7950.

Ordered, that the application to remand the cause to the 3d judicial district court for the parish of St. Martin be refused.

90 *Answer of De Clouet.—Filed June 20th, 1877.*

(Copy furnished as per agreement filed July 25th, 1878.)

No. 7950.

United States circuit court, district of Louisiana.

ALEXANDER DE CLOUET ET AL.
vs.
WM. H. SEWARD, JR., AN ABSENTEE. } No. 8000.

WM. H. SEWARD ET AL.
vs.
JEAN B'TE COMEAU, SHERIFF, ET AL. } No. 8030.

The joint and several answers of Alexander Declouet and Mrs. Marie Charlotte Declouet, widow of Charles Deehommer, defendants, to the petition of Wm. H. Seward and George F. Seward in the above entitled suit, No. 8030, in the third judicial district court of the State of Louisiana, in and for the parish of St. Martin, filed herein on the 30th of September, 1875.

1. These defendants, reserving to themselves the benefit of all and singular the exceptions to the plaintiffs' said petition, heretofore filed on their behalf in said district court, all right of further exception,
91 and all exceptions heretofore filed in said district court to said petition, for answer thereto admit and expressly allege that, being the joint lawful holders and owners of the promissory note and of the mortgage and vendors' privilege mentioned and described in their petition to the judge of said third judicial district court, in the said above entitled suit No. 8000 of the docket of the district court in and for the parish of St. Martin, which said mortgage imports a confession of judgment, these defendants obtained from said judge of said district court an order of seizure and sale, or executory process, as provided for by the laws of Louisiana, for the seizure and sale of the mortgaged premises described in their said petition and in the act of mortgage accompanying the same for the satisfaction of said mortgage-debt, and that the said sheriff of the parish of St. Martin had seized and was proceeding to advertise and sell said mortgaged premises by virtue of said executory process, to satisfy said mortgage-debt, and the said sheriff of the parish of St. Martin had seized and was proceeding
92 to advertise and sell said mortgaged premises by virtue of said executory process to satisfy said mortgage debt represented by said promissory note, when he was restrained therefrom by the injunction sued out by the plaintiffs in this suit, and as a part of their answer herein defendants refer to their said petition for a more particular description said note, mortgage, and vendors' privilege, and of the said mortgaged premises.

2d. These defendants, further answering, say that they can neither admit nor deny, for they do not know whether it is true, that the said William H. Seward has ever conveyed the said mortgaged property, the said Magenta plantation and its appurtenances, to the said George F. Seward, one of the said plaintiffs, at the time and in the manner as alleged in the petition of plaintiffs, but they say that even if the same be true, it in no manner charges or restricts their right to proceed against their mortgagor, the said William H. Seward, for the enforce-

ment of their said mortgage by the seizure and sale of the said mortgaged property to satisfy said mortgaged debt, without joining the said George F. Seward as defendant therein, because they say that
93 their said act of mortgage contains the pact de non alienando, which under the laws of Louisiana entitles these defendants to proceed directly against their said mortgagor for the enforcement of said mortgage without any respect to his subsequent vendee thereof, if any there be.

3. These defendants, further answering, deny that the said order of seizure and sale, the advertisement of the sale of said mortgaged premises by the said sheriff by virtue thereof, or the proceedings therein, or any of them, are illegal, null and void as charged by the said plaintiffs in their said petition, but defendants allege that the same amicable things, regular and according to the laws of Louisiana, as they are advised and verily believed.

4. These defendants, further answering, deny that there was any error or want of consideration of the said note made and executed by the said William H. Seward upon which their said executory process was founded, and they deny the truth of each and every of the allegations of the plaintiffs in their said petition in any way relating to said alleged error or want of consideration, and they say that said note and mort-
94 gage are in all respects good and valid, and were given for an adequate and valid consideration.

5th. These defend*end*ants, further answering, deny that said plaintiffs have any just cause to fear of being disquieted in their possession of the said Magenta plantation under the title acquired by the said William H. Seward from the said Naomi Arbonneaux under his said purchase from her of the 5th of March, 1870, or that they are in danger of eviction therefrom by reason of any of the grounds alleged by them in their petition, and these defendants say that the allegations of the plaintiffs in this respect are not sufficient in law or equity to entitle them to the injunction sued out in this case, even if their said allegations were true, but which are herein specially denied.

6. These defendants, further answering, deny that they were legally or equitably required to proceed against any other party than the said William H. Seward, the mortgagor, or in any other manner than they have done by means of their said executory process for the seizure and sale of the said mortgaged property, for the enforcement of their
95 said mortgage to satisfy said mortgage debt, because they say that said mortgagor in said act of mortgage of the 5th of March, 1870, expressly obligated himself not to sell, alienate, or encumber said mortgaged property to the prejudice of said mortgage, which under the laws of Louisiana made said mortgage exigible by proceedings directed solely against the said mortgagor, notwithstanding any alienation of said mortgaged premises he might thereafter make.

7. The defendants, further answering, deny that there was any necessity for the appointment of a curator ad hoc after an attorney ad hoc had been appointed to represent said absent debtor in said suit No. 8000, the said attorney ad hoc being an attorney at law, and they say that the appointment of said attorney ad hoc was all the law required in the premises and was in conformity to the laws of Louisiana.

8. These defendants, further answering, deny the truth of the allegations of said plaintiffs that the notice of seizure required by article 654 of the code of practice of Louisiana was not given to the said
96 seized debtor or his representative after the seizure of said mortgaged premises was made by the said sheriff, but they allege that

said notice was duly given and served on Edward Simon, esq., attorney ad hoc appointed by the court to represent said absent debtor in said executory proceedings, and that all other notices required by law in the premises were also duly served on said attorney ad hoc after his appointment and qualification as such, and they deny that such notice or notices should again served on said Edward Simon, esq., as the agent or attorney at law of the said absent debtor, if such he was.

9. These defendants, further answering, deny that any wrong or injury was done or any damage was occasioned to the said plaintiffs by the advertisement of said premises to be sold in lots of not less than ten nor more than fifty acres, or that said advertisement is in anywise wrong or illegal, but they say that it is in conformity to article 132 of the State constitution, which requires that "all lands sold in pursuance of decrees of courts shall be divided into lots of from ten to fifty acres,"
97 and to the statutes of the State enforcing said constitutional provision.

10. These defendants further deny that said mortgaged property was legally or rightfully under seizure by the tax collector of the parish of St. Martin, at the time it was seized and advertised for sale by said sheriff, under their said executory process, but they allege, upon their best information and belief, that if said property was in fact then under seizure by said tax collector, said seizure was irregular, illegal, and void, and was made in collusion with the agent or representative of the said absent debtor, for the wrongful purpose of embarrassing and hindering these defendants in exercising their legal and equitable right to have said mortaged property seized and sold to satisfy their said mortgage, and these defendants say that said seizure by said tax collector (if any such there was) furnished no legal or equitable right to said plaintiffs to have and maintain the injunction issued in this case, and these defendants are informed and believe, and so allege the fact to be, that all the taxes that had been assessed upon said mort-
98 gaged property, at the date of their said seizure, have long since been fully paid and satisfied, and no complaint has ever been made by said tax collector of the said executory proceedings of these defendants in the premises.

11th. These defendants, further answering, deny the truth of each and every of the allegations of plaintiffs as their 9th ground for their injunction touching the alleged want of consideration of said note, and defendants deny that there is any defect, as alleged by plaintiffs, in the title to said land, or any part thereof embraced in the said Magenta plantation, so sold and conveyed to the said William by the said Naomie Arbonneaux, by the said act of sale of the 5th of March, 1870, and they further deny that there is any deficiency in the quantity of said land, as alleged by the plaintiffs.

12th. These defendants, further answering, deny that the Government of the United States, or of the State of Louisiana, has any remaining title to any part of said land, and especially to any of the lots enumerated by plaintiffs in their 10th alleged ground for injunction; and they further deny that plaintiffs have any just cause to fear
99 of being disquieted under the title so acquired by the said William H. Seward from the said Naomie Arbonnaux as aforesaid, and defendants say that the plaintiffs' allegations in their behalf are wholly insufficient in law or equity to entitle them to the said injunction, or to the relief which said plaintiffs in their petition demand.

13. These defendants, further answering, deny that the plaintiffs have suffered any damages in the premises for which these defendants are in

any manner answerable. And these defendants, further answering, say that, as they are advised and verily believe, and they so allege the fact to be, the said injunction issued herein by the said State court was wrongfully obtained by the said plaintiffs upon allegations untrue in point of fact, and insufficient in law or equity to entitle them to said injunction; and these defendants verily believe, and so allege the fact to be, that this suit has been instituted by said plaintiffs for the wrongful purpose of hindering and delaying these defendants in exercising their just and equitable right to have said mortgaged premises sold
100 under their said executory process to satisfy their said mortgage and vendors' privilege.

And these defendants, further answering, deny that the said plaintiffs are entitled to the relief, or any part thereof in their said petition demanded. And these defendants pray the same advantage of their said answer as if they had pleaded or demurred to the said petition of the said plaintiffs.

And defendants reserve to themselves the right to proceed by a future action against said William H. Seward and George F. Seward, and their sureties, for the recovery of the damages occasioned by the wrongful suing out of the said injunction, and the interruption of the proceedings under the said order of seizure and sale, and hereby pray to be hence dismissed, that said injunction be dissolved, and for their reasonable costs and charges in this behalf most wrongfully sustained, reserving these defendants their right to recover the damages they have sustained by the wrongful acts of complainants.

(Signed) ALEXANDER DE CLOUET,
" MARIE C. DELHOMMER,
Defendants.

(Signed) A. L. TUCKER,
(Do.) MERRICK, RACE & FOSTER,
For Defendants.

101 UNITED STATES OF AMERICA,
District of Louisiana:

Alexander de Clouet and Marie Charlotte Delhommer, being each duly sworn, depose and say that they are the defendants named in the foregoing answer subscribed by them; that they have read the same and know the contents thereof, and that the same is true to their own knowledge except as to the matters therein stated on information and belief, and as to those matters they verily believe it to be true.

(Signed) ALEXANDER DE CLOUET.
(Do.) MARIE C. DELHOMMER.

Subscribed and sworn to before me this 17th day of June, 1877.
[L. S.] (Signed) CHARLES DELHOMMER,
Notary Public.

101*a* *Interrogatories and answers.—Filed April 6th*, 1878.

U. S. circuit court for the 5th circuit & district of Louisiana.

No. 7950.—Consolidated.

ALEXANDER DE CLOUET ET AL.
vs.
W. H. SEWARD ET AL.

WM. H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL.

Interrogatories to be propounded to & answered under oath by John E. Breaux, register of U. S. land office in New Orleans, and Thomas J. Tully, clerk therein, or either of them, on behalf of plaintiffs in injunction.

1st interrogatory. What is your position and occupation?

2d. do. What is the superficial area of an acre and of an arpent?

3d interrogatory. Please examine the title set forth on pages 10 et seq. of record of above entitled and numbered case on file herein, and state how much land is conveyed by the description contained in the 13th item of said title, page No. 14 of said record. Is it more or less than $273\frac{35}{100}$ acres, and by how much does it differ?

4th interrogatory. Please examine the authenticated copy of the sheriff's advertisement of said property on page 28 of said record, item No. 13, and state whether or not it corresponds with the land as
101*b* described in the title. State whether or not such lands so described exist; and if yea, how many acres they consist of?

5th interrogatory. If it will facilitate the understanding of your answers to previous interrogatories, please annex to your answers a plan or diagram of the lands described in the said 13th item of title.

Cross-interrogatories:

1st cross-int. Have you examined the plat of the Magenta plantation made by the parish surveyor for the division of said plantation into lots not less than ten nor more than 50 acres each?

2d cross-interrogatory. Have you made a survey of the whole plantation, and are you able to say that there is less than sixteen hundred arpents in the whole plantation sold to said W. H. Seward and now under seizure in this case? If you say you have made such seizure of the whole plantation, describe the different tracts of land composing said plantation, and give the courses and distances and quantity of each tract of the whole. Give the date and time you made the survey.

101*c* 3d cross-interrogatory. What kind of land is that mentioned in the 13th item of the title, page 14 of the record. How far is it from the centre of the Magenta plantation? To what use are those lands put? With what growth are they covered?

4th cross-interrogatory. Can you say from an actual survey of the land delivered under the act of sale to W. H. Seward that there was not in fact more than sixteen hundred acres of land delivered to him as the Magenta plantation. Were there not found by the actual survey of the parish surveyor that the sheriff had seized under the said act

of sale more than two thousand acres? If your answer in the negative, give the actual quantity contained in said sale and held by said Seward and his vendee and seized by the sheriff.

(Signed) A. L. TUCKER AND
MERRICK, RACE & FOSTER,
Sol's for Def'ts.

Answers to interrogatories and cross-interrogatories.

WM. H. SEWARD & AL.
vs.
J. B. COMEAU ET AL.

1st. I am clerk of the U. S. land office in New Orleans, La., & in the absence of John E. Breaux, the register, have charge of said office.

2d. An acre is 1 arpent & 17.551 perches, & an arpent is 8507 ten thousandths of an acre, or $\frac{5}{6}$ of an acre.

3d. The amount of land conveyed by the description contained 101*d* in the 13th item on page 14 of record in above entitled suit is $44\frac{70}{100}$ acres, and is $228\frac{66}{100}$ acres les than the amount expressed in the title.

4th. The land as described in the sheriff's advertisement on page 28 of record does not exist and does not correspond with the title.

5th. I have annexed a certified copy of the official map in this office to my answers to interrogatories already filed in the above entitled suit on the 13th of December, 1877, and marked it A for reference, and to which I now make reference.

To cross-interrogatories.

1st. I have not seen such a plat as that mentioned.

2d. I have made no survey of the plantation mentioned.

3rd. I do not know the character of the land described on page 14th of the record.

4th. I cannot say.

(Signed) THOS. J. TULLY, *Clk.*

Sworn to and subscribed before me this 7th day of February, 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

We hereby consent that the witness to whom the forgoing interrogatories are propounded may write down his answers thereto and make oath to the truth of the same, to have the same effect as evidence as if taken before a commissioner.

Febr'y 7, 1878.

(Signed) A. L TUCKER &
MERRICK, RACE & FOSTER,
Sol'rs for Def'ts.

102 After answer of De Clouet.

Entry at rules.—Extract from chancery order book, June 20th, 1877.

WM. H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL. } No. 7950.

Alexander De Clouet and Mrs. Marie Charlotte Declouet, widow of

Chevalier Delhomme, have this day, by their solicitors, A. L. Tucker and Merrick, Race & Foster, filed their joint and several answers to the petition of Wm. H. Seward and George P. Seward.

Entry in chancery order book.—Dismissal of bill, &c., November 10th, 1877.

WM. H. SEWARD & AL.
vs.
J. B. COMEAU ET AL. } No. 7950.

In this case, on motion of A. L. Tucker and Merrick, Race & Foster, of counsel for the defendants in the above cause, for want of a replication to the aswer of defendants, it is ordered that the said suit of said William H. Seward and George F. Seward againsts aid defendants be dismissed with costs.

103 *Dismissal of suit for an injunction.—Extract from the minutes of November 10th, 1877.*

WILLIAM H. SEWARD ET AL.
vs.
J. B. COMEAU ET EL. } No. 7950.

On motion of A. L. Tucker and Merrick, Race & Foster, of counsel for the defendants, and on suggesting to the court that the joint and several answer' of the defendants was filed on the 20th day of June, of the present year, A. D. 1877, in this court, and that the said plaintiffs have not filed a replication to said auswer within the time prescribed by the rules for the practice of courts of equity of the United States, nor complied with said rules, and on suggesting that the said defendants have this day entered on the chancery order docket of this court, dismissing the said suit, it is ordered, adjudged, and decreed by the court that said suit of the said plaintiffs for an injunction be dismissed, at the costs of said plaintiffs in injunction, with a reservation of defendants' rights.

104 *Rule to rei[illegible]tate.—Filed November 16th, 1877.*

In circuit court of the United States for the district of Louisiana, in chancery.

WILLIAM H. SEWARD & AL.
vs.
JEAN BAPTISTE COMEAU, SHERIFF, ET AL. } No. 7950.

On motion of D. S. Bryon, of counsel for plaintiffs, and on suggesting to the court that on Saturday, the 10th of November, 1877, on motion of defendants' counsel, the suit of plaintiff for an injunction was dismissed, for the want of a replication to defendants' answer. It is ordered that defendants show cause, on 23d instant at 11 a. m., why the said order dismissing said suit should not be set aside, and the said suit and injunction be reinstated in full force and effect, on plaintiffs' filing a replication to defendants *to* answer at such time as the court shall direct.

105 *Order, suit reinstated.—Extract from the minutes of November 24th, 1877.*

WM. H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL. } No. 7950.

The motion made by complainants on 16th of November, 1877, to vacate the order of 10th instant, dismissing this suit, came on to be heard, and was argued by counsel. On consideration whereof it is ordered that the motion be allowed, the entry of dismissal set aside, and the suit and injunction reinstated, upon complainants filing nunc pro tunc a replication to defendants' answer, and upon putting in their proofs within 30 days from this date.

Replication.—Filed by order of court, November 24th, 1877.

United States circuit court, district of Louisiana.

WM. H. SEWARD ET AL.
versus
106 J. B. COMEAU ET AL. } No. 7950.

The replication of William H. Seward and George F. Seward, complainants, to the answer of J. B. Comeau, Alexander De Clouet, and Mrs. C. De Clouet, widow.

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied is true; all which matters and things these repliants are, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

107 (Signed) D. S. BRYON,
Of counsel.

Entry in chancery order book, November 24th, 1877.

WILLIAM H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL. } No. 7950.

Complainants herein have this day by their solicitor, D. S. Bryon, filed their replication to the answer of J. B. Comeau and C. Declouet, widow.

Notice of motion.—Filed December 11th, 1877.

United States circuit court, district of Louisiana, in chancery.

WILLIAM H. SEWARD
vs.
J. B. COMEAU, SHERIFF, ET ALS.

D. S. BRYON, Esq.:

SIR: Take notice, that on behalf of the defendants in injunction in

the above-entitled case, their counsel will move the said court on
108 Saturday, the 15th day of December next, at 11 o'clock a. m., or so soon thereafter as counsel can be heard, to dissolve the injunction granted in this case, upon the ground that no sufficient reason apears upon the record why the same should be maintained, and on the trial of said motion these movers will read and use the defendants' answer and exhibits thereto annexed, and urge that said injunction issued improvidently, and has been manifestly sued out for a delay, and to prevent the speedy course of justice under the executory process. And the said court will be moved for such other and further order or relief as the nature of the case may require and the court may think proper to grant.

(Signed) A. L. TUCKER &
MERRICK, RACE & FOSTER,
Solicitors for Defendants.

R. H. Wilson being duly sworn, on oath says that he de-
109 posited a copy of the within notice of motion on the desk of Mr. D. S. Bryon, solicitor for complainants, in his office, said desk being designated as the desk occupied by Mr. D. S. Bryon, y an attorney at law in the same office, said Bryon being out at the time.

(Signed) A. H. WILSON.

Sworn and subscribed before me this 11th Dec'r, 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

Submission of motion.—Extract from minutes of January 4th, 1878.

W. H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL. } No. 7950.

The hearing on the motion to dissolve the injunction was resumed, and the court having heard the argument of E. T. Merrick, esq., took time to consider.

Order on application to dissolve.—Extract from minutes of January 24th, 1878.

WM. H. SEWARD ET AL.
vs.
J. B. COMEAU, SH'FF, ET AL. } No. 7950.

110 On due consideration ot this cause, it is ordered that the motion to dissolve injunction be transferred, to be heard with the merits of the case within 30 days from this date.

Motion and order to issue commission.—Extract from the minutes of Feb'ry 7th, 1878.

WM. H. SEWARD ET AL.
vs.
J. B. COMEAU, SHERIFF, ET AL. } No. 7950.

On motion of A. L. Tucker and Merrick, Race and Foster, it is ordered

that a commission issue to Alfred Voorhies, a commissioner of this court, or to the parish judge, or any notary public in and for the parish of St. Martin, as commissioners and examiners, to take the testimony under the interrogatories and cross-interrogatories *and cross interrogatories* to T. W. Martin, Burbank, and others, witnesses on the part of the defendants.

111 *Commission issued February 7th*, 1878. *Returned and filed February 22d*, 1878.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Alfred Voorhies, a commissioner of this court, or to the parish judge, or any notary public in and for the parish of St. Martin, as commissioners and examiners:

Know ye, that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you S. V. Martin, Burbank, Charles Delhammer, and others, witnesses, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Wm. H. Seward et al., plaintiffs, and Jean B. Comeau, sheriff, et al., are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also
112 this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 7th day of February, anno Domini 1878, and the 102d year of the Independence of the United States of America.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk,

(Signed) By F. B. VINOT,
D'y Clk.

Interrogatories for defendant, annexed to commission.

Circuit court of the United States, fifth circuit and district of Louisiana.
In chancery.

WM. H. SEWARD ET AL.
vs.
JEAN B. COMEAU, SHERIFF, ET ALS. } No. 7950.

Interrogatories to be propounded to S. V. Martin, Burbank, Charles Delhammer, and other witnesses, in the parish of St. Martin, on the part of the defendants, in the above-entitled cause.

113 1st. Where do you reside, what is your age, occupation, or profession?

2d. Are you or not acquainted with the parties to this suit, or either, or which of them?

3d. Are you or not acquainted with the "Magenta plantation," situate on the Bayou Teche, in the parish of St. Martin, State of Louisiana,

formerly owned by Charles Delhammer and now or lately owned by William H. Seward? If yea, state who is now in possession of said plantation?

4th. Do you or not know what quantity of land there is in said plantation? If yea, how do you know that fact? If you say that you know the number of acres or arpents there are in said Magenta plantation from having made a survey of it, please state whether or not you are a practical surveyor, and what official position, if any, you hold as such, and under whose order or at whose request you made such survey,
114 and at what time, who were present when you made such survey, and what quantity of land (expressed in acres or arpents) you found in said plantation, and if you made a plat of said survey, or map of said plantation, showing the quantity of land therein, please annex the same or a certified copy thereof to your answers, and state whether or not said plat or map is in all respects true and correct and expresses the true amount of land there is in said Magenta plantation, or was at the time said survey was made?

5th. In making said survey of said plantation, and of the different tracts of land of which it is composed, did you or not make a survey of lots contained in sections 27, 28, and 34 of T. 8 S., R. 5 E.; and, if so, what quantity of land did you find in acres or arpents in said section?

6th. What was the character or quality of the land embraced in the last above interrogatory, what is the distance of said lands from
115 the sugar-house on said plantation, what is the value of said lands relatively to the value of the Marie plantation? What is the market value of said lands in said sections 27, 28, and 34?

7th and last. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) A. L. TUCKER AND
MERRICK, RACE & FOSTER,
Sol's for Def'ts.

Cross-interrogatories.

1st. If you, or either of you, say that you are a surveyor or have surveyed the Magenta plantation, state what is the amount and degree of your knowledge and skill in the art or science of surveying. Is your knowledge confined to the ascertaining the area of land bounded by
116 shanghi lines or nearly straight? Can you give the area of a plat of land with lines varying and crooked on every side?

2d. How many acres belonging to the Magenta plantation in lots No. 4 of fract. sect. No. 27; and how many in lots 3 and 4 of fract. sect. 28? How many in lots 3 and 4 of fract. sec. 34, T. 8 S., R. 5 E? How many in each and how many in all? Do they make 273.36 acres?

3d. You are asked in direct interrogatories what the lands in sections 27, 28, and 34 are covered with. If you answer they are covered with timber, state if good timbered lands, and covered with cypress, are not as valuable as any lands of a sugar estate?

4th. What would the Magenta plantation sell for cash at this time?

5th. At what dates were the surveys made, if any surveys where made?

(Signed) D. S. BRYON,
Solicitor for W. H. Seward.

117 STATE OF LOUISIANA,
Parish of St. Martin:

I, L. T. Fournet, a notary public, duly commissioned and sworn in and for the parish and State aforesaid, acting by virtue of a commission to me directed by the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana, which said commission bears date the 7th day of February, A. D. 1878, do hereby certify and make known that the following depositions of S. V. Martin and Charles Delhammer, both of the parish of St. Martin, were taken before me the eighteenth day of February, A. D. eighteen hundred and seventy-eight, at the time and place in the caption hereof mentioned; further, that the examination, responses, and statements of each of said above-named deponents were reduced to writing by me, the undersigned notary, and sworn to and subscribed as the law directs in my presence at the time and place aforesaid.

118 In testimony wherof I, L. T. Fournet, notary, do hereunto set my hand, at St. Martinsville, State of Louisiana, this 18th day of February, eighteen hundred and seventy-eight.

(Signed) L. F. FOURNET,
Not. Public.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of St. Martin:

Depositions of witnesses taken and subscribed before me, L. F. Fournet, notary public, duly commissioned and sworn in and for the parish of St. Martin, State of Louisiana, on the 18th day of February, A. D. eighteen hundred and seventy-eight, between the hours of 10 o'clock a. m. and 3 p. m. of said day, at my office at St. Martinsville, parish of St. Martin, and State of Louisiana, in pursuance of a commission hereto annexed and to be read as evidence in a certain cause now pending in the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana,

119 wherein Wm. H. Seward et al. are plaintiffs and Jean B'te Comeau, sheriff, et al. are defendants, on the part of the said defendants.

Witnesses known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in regard to the matters in controversy in the suit aforesaid, did then and there, on their oaths aforesaid, depose and say and answer as follows, to wit:

WM. H. SEWARD ET AL.
vs.
JEAN B'TE COMEAU, SHERIFF, ET AL. } No. 7950. In chancery.

Circuit court of the United States, fifth judicial circuit, district of Louisiana.

Answers of S. V. Martin to interrogatories in the above case.

To first interrogatory. I reside at St. Martinsville; I am forty-nine years of age; I am a surveyor.

To second interrogatory. I am acquainted with all the parties to the above suit.

120 3d. To the third interrogatory. I am acquainted with the Magenta plantation, formerly owned by Mr. Charles Delhammer, now,

I believe, belonging to Wm. H. Seward. Said plantation is now under the management of Charles Starr, and in his actual possession.

To fourth interrogatory. I know the quantity of land in said plantation, having made a survey of it. I am a practical surveyor since a quarter of a century. I am a commissioned United States deputy surveyor and parish surveyor of the Parish of St. Martin. Six or seven years ago I made a survey of the Magenta plantation, at the request of Wm. H. Seward and Starr, jr., who were on the plantation at that time. I made a plat of my survey and gave it to said parties. I was then acting as a private surveyor. On the 27th day of September, 1875, I returned a plat of the survey of the Magenta plantation, made by me in obedience to an order of the sheriff of the parish of St. Martin,
121 copy of said plat being here annexed (annexed hereto as per agreement), and showing said plantation to have an area of two thousand and two acres and seventy-two one-hundre'ths of an acre, said plat being true and correct to the best of my ability and knowledge, and containing the exact area of land therein mentioned; made in presence of the chainers named in the plat.

To fifth interrogatory. The actual survey in sections 27, 28, and 34, T. 8 S., R. 5 E, was not made by me either in the private survey made at the request of Wm. H. Seward, or in the survey ordered by the sheriff, though included in both plats; said sections of land being at the times of said surveys covered under water. But in the beginning of the year 1877, at the request of Mr. Charles Starr, I made the actual survey of fractional sections 28 and 34 and west half and lot 4 of fractional section 27, T. 8 S., R. 5 E, containing in all two hundred
122 and seventy-two acres and thirty six one-hundre'ths of an acre. The survey of sections 27, 28, and 34, were made in the presence and assisted by four men furnished me by Mr. Charles Starr. The quality of the land is inferior, being always covered with water, and good only as timbered land, situated at two miles from the sugar-house. The said land covered with tupelo, gum, and some cypress and ash wood. Cannot tell the value of said swamp land, in regard to the plantation, the market value of the same is about three or four dollars an acre.

To the sixth interrogatory. My answer is contained in the answer to the fifth interrogatory.

To the seventh and last interrogatory. I have nothing more to testify that would be of any benefit to either of the parties to the above suit.

(Signed) S. V. MARTIN.

Sworn to and subscribed before me on this eighteenth day of February, A. D. 1878.

(Signed) L. F. FOURNET,
Not. Public.

123 WM. H. SEWARD ET AL.
vs.
JEAN B'TE COMEAU, SHERIFF, & ALS. } No. 7950. In chancery.

Circuit court of the United States for the fifth judicial circuit, district of Louisiana.

Answers of Charles Delhammer to interrogatories propounded to him in the above case.

To the first interrogatory. I reside at Breaux Bridge, Louisiana. I am a merchant.

To the second interrogatory. Yes.

To the third interrogatory. Yes. Mr. Charles Starr seems to be now in actual possession of the Magenta plantation; whether as owner or agent I do not know.

To the fourth interrogatory. I am not a surveyor, but have been the owner of the Magenta plantation, and as such I am fully satisfied that I have sold and delivered to Mr. Seward over and above the quantity of land guaranteed in the state as established by official survey made by order of court.

124 To fifth interrogatory. As former owner of the Magenta plantation, I can certify that fractional section 28, and lots 3 and 4 of section 34, and west half of section 27 and lot 4 of section 27, contains two hundred and seventy-two and $\frac{36}{100}$ acres, for having bought said land from Mr. Joseph M. Moore, and afterwards sold it to the Sewards. It was the tract sold by bill of sale to Seward, and erroneously described in paragraph 13 of bill of sale, as evident by bill of sale from Joseph M. More to me, hereto annexed (transcribed on page of this transcript).

To sixth interrogatory. It is a swamp, valuable only for the timber one mile and a half from the sugar-house. It is of little value to the plantation, and only account of the few cypress trees that are on it. The market value is not over one dollar per acre.

To seventh interrogatory. It is to my personal knowledge that since the sale of the Magenta plantation Mr. Starr, and before him

125 Mr. Seward, have been in full possession of frac. sec. 28, and lots 3 and 4 of section 34, and west half of lot 4 of section 27. He has made juices on said land, drawn cypress from it, and lately a man by the name of Omer Zenon was sued by Mr. Starr for cutting trees out of it. I have paid the costs of suit for the said Zenon, who was cast by the court at Breaux Bridge. In several instances Mr. Starr told me personally that he had instituted the above entitled and numbered suit only for gaining time, and his attorney, Judge E. Simon, of St. Martinsville, repeatedly told me the same thing.

Cross-examination:

To the first interrogatory. I cannot answer the question, not being a surveyor.

To second cross-interrogatory. Lot No. 4, of section 27, containing $33\frac{44}{100}$ acres, belongs to the Magenta plantation. Fractional section 28, containing 7.80 acres, belongs to the Magenta plantation, and

126 lots 3 and 4, of section 34, containing 20.28 acres, belong also the Magenta plantation, making in all 61.52. They do make 273, but the land purchased from Mr. Moore and sold to Seward do make it.

To third interrogatory. They are covered with a few cypress trees and mostly tupelo gums. They are not of much value to the plantation on account of being of difficult access, and of the poor quality of the timber intended for fuel.

To fourth interrogatory. In my candid opinion, if the Magenta plantation would now be sold for cash, it would not bring much over ten thousand dollars in the delapidated condition in which it is at present.

To fifth interrogatory. I do not know.

(Signed) CH'S DELHAMMER.

Sworn to and subscribed before me on the 18th day of February, A. D. 1878.

(Signed) L. T. FOURNET,
Not. Public.

Fees and postage, $12.

127 CLERK'S OFFICE,
Parish of St. Martin.

I hereby certify that L. T. Fournet is a duly commissioned notary public in and for the parish of St. Martin, and that his signature attached to the above is true and genuine.

Given under my hand and seal of office, at St. Martinsville, this 19th day of February, A. D. 1878.

[SEAL.] (Signed) ALCIDE VEAZY,
Clerk Third Judicial District Court.

Clerk's fees, 50c.

Bill of sale annexed to foregoing deposition.

STATE OF LOUISIANA,
Parish of St. Landry:

Be it known that in this day, before me, Yres Davy, recorder in and for the parish of St. Landry, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Joseph Murtaugh Moore, of the parish of St. Landry, State of Louisiana, who declared that for the consideration hereinafter mentioned he has and does by these presents
128 grant, bargain, sell, transfer, convey, assign, set over, and deliver, with full guarantee against all troubles, debts, mortgages, claims, eviction, donation, alienation, or other encumbrances whatsoever, and with subrogation to all his rights and actions of warranty against all previous owners, unto Charles Delhammer, of the parish of St. Martin, in this State, herein represented by Henry L. Garland, of St. Landry, in virtue of a letter of attorney under private signature, hereto annexed, present, accepting, and purchasing for said Delhammer, his heirs and assigns, the following described property, to-wit: A certain swamp land, containing two hundred and seventy-three $\frac{36}{100}$ acres, being the west fractional half a lot No. four of fractional section No. twenty-seven, fractional section No. twenty-eight, and lot No. three and four of fractional section thirty-four, in township eight south, range five east, in the southwestern land district of Louisiana, being the same acquired by said Moore, from the State of Louisiana, as appeared by certificate No. 1864, bearing date Baton Rouge, June 20th, 1855; this sale is
129 made for the total price of one thousand dollars, paid to wit: First. Five hundred dollars by draft on Mr. Th. Lanaur, of New Orleans, dated Attakapas, 15th, 1858, drawn by said Delhammer in favor of said Moore, or order, as right. 2d. Five hundred dollars by a note of said Delhammer in favor of said Moore or order, dated May 15th, 1858, payable twenty months after date, bearing eight per centum per annum interest from date until paid, said draft and note being paraphed ne varietur and signed by me, recorder, to identify them herewith, were handed to the said Moore, who acknowledges receipt therefore, to have and to hold the said swamp lands unto the said Charles Delhammer, his heirs and assigns, to their proper use and behoof forever, and the said Joseph M. Moore for himself and heir, *and* said swamp land to the said Charles Delhammer, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whatsoever by these presents; and the said vendor does more-
130 over subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendor of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as himself might or would be done, to secure and ensure the punctual payment of

said note and draft and interest accruing thereon, the vendor retains a special mortgage and vendor's privilege on the property herein sold and described, to which the said Garland, as agent aforesaid, consents, and promises not to alienate or otherwise dispose of said property to the prejudice of the present mortgage, the certificate of mortgage required by article 3328 of the Louisiana civil code, and all others in the subject of lien and mortgage are dispensed with by the contracting parties, who agree to free the undersigned recorder from all liability for the non-production of the same.

Personally came and appeared likewise Mrs. Annette Wartell, wife of said Joseph M. Moore, who, being duly authorized by her said husband, declared that it is her intention to make renunciation of
131 her rights on the property so sold by her husband, and I, the said recorder, undersigned, having carefully read and explained to her, out of the presence of her husband, the act of sale above recited, declared to her, *will* out of the presence of her husband, that by the law of the State the wife has a legal mortgage on the immovables of her husband, to wit: 1st. For the reservation of her dowry, as well as for the replacing of her dotal effects which she brought at the time of her marriage. 2d. For the restitution of replacing of the dotal effects which she acquired during her marriage either by succession or donation. 3d. For the such of her paraphernal property and funds as may have been alienated by her said husband, or of which she has the enjoyment, or of which she may otherwise have benefited. 4th. For indemnity against all debts contracted with or for her husband and for a nuptial present, and that in making her intended renunciation she would deprive herself irrevocably of all rights on the property herein sold.

Whereupon the said Mrs. Moore declared that being duly in-
132 formed of the rights of married women in the property of their husbands, and of the effects and nature of her renunciation, she still persisted in the intention she had renounced, and consequently she does by these presents, of her own free will, and with the consent of her husband, renounce in favor of said Charles Delhammer her matrimonial, dotal, paraphernal and other rights, mortgage, lien, and privileges which, by virtue of law or otherwise, she may have in the property sold in the act above mentioned.

Thus done and passed at the town of Opelousas, in the parish of St. Landry, in presence of James Ray and Lewis V. Chachére, witnesses of lawful age, domiciliated in said parish of St. Landry, who hereunto sign their names, together with said parties, and me, the said recorder, on the thirty-first of May, in the year one thousand eight hundred and fifty-eight.

(Signed)

HENRY L. GARLAND.
JOSEPH M. MOORE.
ANNETTE MOORE.

Witnesses:
JAMES RAY.
L. V. CHACHÉRE.
Y. DAVY, *Recorder.*

STATE OF LOUISIANA,
Parish of St. Landry:

133 I, Jules L. Chachére, recorder in and for the parish and State aforesaid, do hereby certify that the within and foregoing is a true

and correct copy of record in my office, and that same was duly recorded May 31st, 1858, in alienation book R, page 69.

Witness my hand and seal of office this fifteenth day of February, 1878.

[SEAL.] (Signed) J. L. CHACHÉRE,
Recorder.

Exhibit A, with defendant's answer.—Filed April 5th, 1878.—Extract of the minutes of the 3d judicial district court, holding sessions in and for the parish of St. Martin.

FRIDAY, *the 14th September*, 1866.

Court met pursuant to adjournment.

* * * * * * *

NOEMIE ORBONNEAU, WIFE, *vs.* CHARLES DELHOMMER. } 5480.

Leave granted to prosecute this suit. Default.

* * * * * * *

Ordered that court adjourn.

A true copy from the minutes of the district court (3d jud. dist.) in and for the parish of St. Martin.

[SEAL.] (Signed) JOS. BORDIER.
134 *D'y Clerk 3d Jud. Dist. Court.*

I hereby consent that this certificate or abstract of the minutes of court may be used as evidence in the suit of W. H. Seward et al., No. 7950, U. S. circuit court, versus J. B. Comeau, sheriff, et al., subject to all legal objections, without the production of the balance of the record to which it belongs.

Feb'y 7th, 1878.

(Signed) D. S. BRYON,
Sol. for Seward.

District court, parish of St. Martin.

NOEMIE ARBONNEAUX, WIFE, &C., *vs.* CHARLES DELHOMMER. } No. 5480.

In this case a judgment by default having been regularly taken, and no motion made to set the same aside, and besides the law and evidence being in favor of plaintiff, it is ordered, adjudged, and decreed, that she be separated in property from husband, and recover from him the sum of thirty-six thousand thirty-two dollars and ninety-one cents, with legal interest from this date, and the costs of this suit to be taxed.

135 It is further ordered, adjudged, and decreed that the plaintiff's mortgage on her husband's property shall take effect as follows to wit, for the sum of ten thousand dollars from the thirty-first day of July, on eighteen hundred and fifty-two, and for the balance from the seventeenth of April, eighteen hundred and fifty-six.

Done, read, and signed, in open court, this 29th day of September, A. D. eighteen hundred and sixty-six.

(Signed) FRED. GATES,
Judge 3d J'l Dist.

A true copy.
(Signed) JOS. BORDIER,
D'y Clerk, 3 J'l D's't.

Exhibit B, to go with defendant's answer.—Filed April 5th, 1878.

STATE OF LOUISIANA,
Parish of St. Martin:

By this instrument of procuration, be it known that on this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the 92d, before me, Owen Martin, a notary
136 public in and for the parish of St. Martin, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Mrs. Noemi Arbonneaux, of the parish of St. Martin, the wife of Charles Delhommer, from whom she is judicially separated in property, but by her said husband herein assisted and authorized, who declared that she has made and appointed, and does by these presents make, nominate, ordain, authorize, and appoint, and in her name, place, and stead, depute and put Charles Delhommer, esqr., of the parish of St. Martin, her husband, to be her true and lawful attorney in fact, general and special, and by these presents granting unto the said attorney full power and authority for her, and in her name and behalf to her use, to conduct, manage, and transact all and singular her affairs, business, and concerns in the State of Louisiana, of whatever nature or kind, without any exception or reservation whatsoever; to open all letters of correspondence addressed to her, and to answer the same; to make and indorse promissory notes in the name of the said con-
137 stituent, and draw, endorse, and accept bills of exchange; to make checks and draw money out of any bank or banks wherein the same may have been deposited in the name and for account of said constituent; to deposit drafts, bills of exchange, acceptances and promissory notes, or other obligations for collection in any bank or banks, and withdraw the same, or the amount thereof, at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or banks, or other corporate body or bodies, owned by said constituent, and receive *and receive* and receipt for the dividends due or to become due thereon; to pledge and pawn all or any shares of the capital stock of any bank or banks, or other corporate body or bodies, owned by the said constituent, and to make, give any note or notes which may be necessary from time to time for the renewal of the same; to attend all or any meetings of creditors wherein the said constituent may be interested, and vote in her name on all questions and cases that may be submitted to such meetings; to attend all or any meetings of the stockholders of any bank or banks, or other cor-
138 porate body or bodies wherein the said constituent may be interested, and vote in the name of the said constituent on all questions and cases that shall or may be submitted at such meeting; to borrow money from any bank or banks, or other moneyed institution or institutions, on the notes or obligations of the said constituent, drawn by her, the constituent, or by the said attorney, or those of others which

shall or may come into the hands of the said attorney for the use of the said Noemie Arbonneaux, and make other notes or obligations from time to time, for the renewal of all such or any part or parts thereof; to sell, transfer and convey, or to mortgage and affect all or any part or parts of the real, personal, or mixed estate of the said Mrs. Noemie Arbonnaux, and to receive the price thereof; also to purchase real, personal, or mixed estate in the name of said constituent, on such terms and conditions as the said attorney shall think fit, and to lease, let, or hire all or any part of the real estate belonging to the said con-
139 stituent, and receive and receipt for the rent thereof as the same shall fall due; and for the full execution of the purposes aforesaid, to make, sign, and execute in the name of the said constituent all acts, whether of sale, mortgage, lease, release, contract, compromise, covenant, deed, agreement, or otherwise, that shall or may be requisite or necessary, and bind the said constituent thereby as firmly as if the same were or had been her own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this district or elsewhere, and do all custom-house business whatsoever; to receive and attend to all shipments or consignments of produce, goods, wares, or merchandise, that shall or may be made to said constituent, either for her own account and risk or that of others; to pursue the instructions of the owners, shippers, or others interested therein relative thereto; to receive and acknowledge notice of protest of all or of any bills, drafts, or promissory notes to which the said constituent may be a party, and to act
140 for the said Mrs. Noemi Arbonneaux and be her substitute in all cases wherein she may be appointed the agent or attorney of others, and to ask, demand, have, take and by all lawful ways and means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property and effects whatsoever as now is or are or may hereafter be in his, her or their custody or possession, due, owing, coming or belonging to her the said constituent, whether by bond, bill, note, book, debt, account, *constituent whether by bond, bill, note, book, debt, account*, consignment, bequest, or for and by what other reason or means soever; and to that end with whom it may concern to adjust and settle all accounts, and upon recovery and receipt in the premises to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute as occasion shall require, or to compromise, compound, and agree in the premises by arbitration or otherwise as the said attorney shall in
141 his discretion think fit; and generally to do and perform all and every other act, matter and thing whatsoever as shall or may be requisite and necessary touching or concerning the affairs, business and concerns of the said constituent as fully, amply, and effectually and to all intents and purposes, with the same validity as if all and every such act, matter or thing were or had been herein particularly stated, expressed, and especially provided for as she the said constituent could or might do if personally present; also with full power of substitution and revocation; and the said Mrs. Noemi Arbonneaux hereby agrees to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed at the parish of St. Martin, aforesaid, the day and year aforesaid, in the presence of Jules Dubernard and Henry Rees,

witnesses of lawful age, who hereunto sign their name as such with the said constituent and me the said notary after due reading of the whole.

(Signed) NOEMI DELHOMMER.
CH'S DELHOMMER.
J. J. DUBERNARD.
HENRY REES.
142 O. MARTIN, *Notary Public.*

RECORDER'S OFFICE,
P'h of St. Martin.

I hereby certify the foregoing to be a true and correct copy of the original act entered on file in this office on the 27th February, A. D. 1868.

Witnesss my hand and seal of office at St. Martinsville this 27th day of Febr'y, A. D. 1868.

(Signed) ALF. F. PESCHIERY,
Deputy Recorder.

Deposition on behalf of def'ts.—Filed April 2d, 1878.

WM. H. SEWARD ET AL.
vs.
JEAN BTE. COMEAU, SH'FF, ET AL. } No. 7950. In chancery.

Circuit court of the United States for the fifth judicial circuit, district of Louisiana.

Depositions of F. G. Burbank, of the parish of St. Martin, taken on the part of defendants in the above entitled and numbered cause.

To first interrogatory. I reside in St. Martinsville, Louisiana; am fifty-two years of age. Am a civil engineer of over thirty years' experience.

143 To second interrogatory. I am acquainted with the parties to the above controversy.

To third interrogatory. Am well acquainted with the Magenta plantation. A. M. Starr is now living on same.

To fourth interrogatory. I cannot give the exact amount. I made my first survey of said plantation in 1859, at the request of Charles Delhommer and in obedience to orders from Col. L. Caldwell, swamp land commissioner, with the regard to draining "Anse Charpentier." I was at the time engineer of the second swamp land district of Louisiana. I also held a deputy United States surveyor's commission, under W. J. McCulloch. I made a plat of said plantation and furnished a copy of same to Chris Delhommer.

To fifth interrogatory. It is composed of two tracts fronting on Bayou Teche, and several detached tracks; part of section 27, 28, and 34, township 8 S., R. 5 east, belong' to Charles Delhommer; at the time
144 of my last survey, they contained 268.26 acres.

To sixth interrogatory. Second class cypress swamp; good only for plantation use; they would sell for five dollars per acre.

To seventh interrogatory. From a map made in 1867, lot 2, cypress swamp, being lots 1, 2, 3, 4, 5, 6, 8, 7, and east half of SE. quarter section 27; lots 3 and 4, section 34; lot 1, section 28, T. 8 S., R. 5 E., contain $268\frac{26}{100}$ acres. This tract is in one body, and, I find in reading paragraph 13 of bill of sale passed before Manuel Dueros, does not give a

true description. I cannot say the exact area of the Magenta plantation, but there is no doubt that Chs. Delhommer owned in 1867 $268\frac{80}{100}$ acres in sections 27, 28, and 34, T. 8 S., R. 5 east.

To first cross-interrogatory. I have made several surveys of the Magenta plantation for Chs. Delhommer, and drawn south line for Mr. Starr. All surveys are made by a series of straight lines. Can
145 give the area of a piece of land, no matter how it stands.

To second cross-interrogatory. Lot 4 contains $33\frac{44}{100}$ acres. Sect. 28 contains $7\frac{80}{100}$ acres; lots 3 & 4, sect. 34, contains $20\frac{08}{100}$ acres.

To third cross-interrogatory. This question cannot be answered competently without making a survey; sec. 27, 28, and 34 are in a body covered with cypress; it is useful to the plantation for fencing and staves. I judge the Magenta plantation at fifteen thousand dollars cash.

To fifth cross-interrogatory. I made three surveys of said plantation in 1859, 1867, and 1875.

(Signed) F. G. BURBANK.

Sworn to and subscribed before me on this 6th day of March, A. D. 1878.

(Signed) L. T. FOURNET,
Not. Public.

Testimony of Judge E. Simon.—Filed April 5th, 1878.

146 U. S. C. C. In chancery.

W. H. SEWARD ET AL.
vs.
J. B. COMEAU, SH'FF, ET AL. } No. 7950.

I am well acquainted with Charles Delhammer, witness in this suit, whose deposition I have read; I am the attorney who instituted this suit in behalf of plaintiffs; I have no recollection of ever having stated to Sena Delhommer that this suit "was only for gaining time," and such was not the case.

(Signed) EDWARD SIMON.

We hereby consent that the forgoing statement of Hon. Edward Simon may be introduced and used as evidence in the above-entitled suit as fully to all intents and purposes as if the same had been sworn to or had been regularly taken before a United States commissioner.

March 5th, 1878.

(Signed) A. L. TUCKER and
MERRICK, RACE & FOSTER.
Sols. for Def'ts.

147 *Motion and order.—Publication of testimony allowed.—Extract from minutes, November term*, 1877.

NEW ORLEANS, *Saturday, April 6th*, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

W. H. SEWARD ET AL.
vs.
J. B. COMEAU, SH'FF, ET AL. } No. 7950.

The application for publication of testimony was called (Merrick

Race & Foster for applicants), and no objection being made, ordered that the rule be made absolute and that publication of testimony be made.

Document offered by D. S. Bryon, esq., April 29th, 1878.—Extract from the minutes of the 3rd judicial district court in and for the parish of St. Martin, Friday, 14th September, 1866.

The court met pursuant to adjournment.

* * * * * * *

NOEMIE ARBONNEAUX, WIFE,
vs.
CHARLES DELHOMMER.

Same order as above & def't.

148 Ordered that court adjourn.

MONDAY, *24th September*, 1866.

Court met pursuant to adjournment.

* * * * * * *

NOEMIE ARBONNEAUX, WIFE,
vs.
CHARLES DELHOMMER.

Judgment. See decree.

* * * * * * *

Ordered that court may be adjourned until to-morrow morning, at 10 o'clock.

STATE OF LOUISIANA,
Parish of St. Martin, Clerk's Office.

This is to certify that the foregoing is a true and correct copy of the minutes of the 3d judicial district court in and for the parish of St. Martin, in the case of Noemie Arbonneaux, wife, vs. Charles Delhommer, No. 5480, and contains nothing more.

Given under my hand and the seal of my office, at St. Martinsville, parish of St. Martin, this 14th day of March, A. D. 1878.

[SEAL.] (Signed) JOS. BORDIER,
D'y Clerk.

149 We consent that the foregoing certificate shall be received in evidence in the suit of Seward et al. vs. Comeau et al., No. 7950, U. S. circuit court, dist. of La.

(Signed) A. L. TUCKER AND
MERRICK, RACE & FOSTER,
Atty's for Def'ts.

Submission of case.—Extract from the minutes April term, 1878.

NEW ORLEANS, *Monday, April 29th*, 1879.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

W. H. SEWARD ET AL.
vs.
JEAN B'TE COMEAU ET AL. } No. 7950.

By consent of counsel here present in open court the cause is submitted and leave granted until 19th May, 1878, to furnish briefs.

Decree—Entered and filed June 5th, 1878.

U. S. circuit court. In chancery.

WILLIAM H. SEWARD ET AL.
vs.
JANE BAPTISTE COMEAU, SHERIFF, ET AL. } No. 7950.

150 This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof it was ordered, adjudged, and decreed, that the injunction issued in this case against the said Jean Baptiste Comeau, sheriff, the said Alexander De Clouet and Marie Charlotte De Clouet, widow, and Chevalier Delhommer, be dissolved; and it is further ordered, adjudged, and decreed, that the plaintiffs' petition and demand, the same being considered a bill of complaint in equity, be dismissed, and that said plaintiff's pay the costs of suit.

June 5, 1878.

(Signed) EDWARD C. BILLINGS,
Judge.

Motion and order for appeal—Extract from the minutes, April term, 1878.

NEW ORLEANS, *Friday, June 7th*, 1878.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

WM. H. SEWARD ET ALS.
vs.
JEAN B'TE COMEAU, SHERIFF, ET AL. } No. 7950.

151 On motion of D. S. Bryon, of counsel for the plaintiffs in the above-entitled case, and on suggesting to the court that the plaintiffs are informed and believe there is error in the final decree signed on the 5th of this current month of June, 1878, which operates greatly to their injury, and that they are desirous of a suspensive appeal from the said decree to the Supreme Court of the United States, and on suggesting further that the note sued on in this case amounts to a little over five thousand dollars, and is secured by mortgage and vendor's lien and privilege on a plantation, of which the purchase price was $31,000, and of which sum over $25,000 has been paid:

It is ordered that an appeal be granted in this case, returnable to the Supreme Court of the United States on the 2d Monday of October, 1878, and that the said appeal shall operate as a "supersedeas" and stay of execution herein until the final decree of the Supreme Court shall have been rendered therein, on the said plaintiffs' giving bond in
152 the sum of one thousand ($1,000) dollars.

Bond for appeal.—Filed July 13th, 1878.

UNITED STATES OF AMERICA:

Know all men by these presents that we, William H. Seward and George F. Seward and William E. Walker and Charles McVea, are held and firmly bound jointly and severally unto Jean Baptiste Comeau, sheriff, parish St. Martin, La., Alexander De Clouet, and Maria Charlotte De Clouet, widow of Chevalier Delhommer, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated the thirty-fourth day of June, in the year of our Lord eighteen hundred and seventy-eight.

Whereas William H. Seward and George F. Seward have this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the dis-
153 trict of Louisiana, praying for an appeal which shall operate as a supersedeas and stay of execution in case No. 7950 of U. S. circuit court, wherein William H. Seward and George F. Seward are pl'ffs and Jean Baptiste Comeau, sh'ff, and Alexander De Clouet and Maria Charlotte De Clouet, widow of Chevalier Delhommer, are defendants:

Now the condition of the above obligation is that we, the above bounden William H. Seward and George F. Seward and William E. Walker and Charles McVea, will well and truly pay to the said Jean Baptiste Comeau, sheriff, and Alexander De Clouet, Maria Charlotte De Clouet, widow of Chevalier Delhommer, the defendant' in said appeal and suit, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) WILLIAM H. SEWARD, [L. S.]
(Do.) GEORGE F. SEWARD, [L. S.]
Per EDWARD SIMON,
Their Attorney of Record & duly authorized to sign this bond.
(Signed) WILLIAM E. WALKER. [L. S.]
(Do.) CHARLES McVEA. [L. S.]

154 Signed, sealed, and delivered in the presence of—
(Signed) O. DELAHOUSSAYE, Jr.,
D'y Recorder, Parish of St. Martin.

STATE OF LOUISIANA,
Parish of St. Martin:

Before me, the undersigned justice of the peace of the parish of St. Landry, personally came and appeared William E. Walker, of the parish of St. Martin, State of Louisiana, who, after being be me duly sworn, upon his oath doth say that he has subscribed in favor of Alexander Declouet, Mrs. Chevalier Delhomme, and Jean Baptiste Comeau, sheriff of the parish of St. Martin, as security of William and George F. Seward in the suit entitled William H. Seward and George F. Seward vs. Jean Captiste Comeau, pl'ff, Alexander De Clouet and Maria Charlotte De Clouet, widow of Chevalier Delhommer, No. 7950, U. S. circuit court, district of Louisiana, in chancery, an appeal bond to amount of one thousand dollars, and that he is worth over said sum of one thousand dollars in real estate and otherwise above his liabili-
155 ties.

(Signed) W. E. WALKER.

Witness:
(Signed) P. A. PRICHARD.
(do.) E. C. ROGER.

Sworn to and subscribed before me, at the parish of St. Landry, this 24th day of June, A. D. 1878.

(Signed) A. PURIO,
Justice of the Peace 4th Ward.

United States circuit court for the district of Louisiana. In chancery.

WILLIAM H. SEWARD & GEORGE F. SEWARD *vs.* JEAN BAPTISTE COMEAU, SH'FF, ALEXANDER De Clouet, & Maria Charlotte De Clouet, widow of Chevalier Delhommer. } No. 7950.

Whereas I have signed for the plaintiffs in the above-entitled case, and in favor of the defendants an appeal bond for one thousand dollars ($1,000) to operate as a supersedeas and stay of execution therein: Now, therefore, in order to justify the said bond and to show that it is
156 good, I do hereby declare under oath before the undersigned authority that over and above my debts and liabilities I am worth the said sum named in the said bond.

(Signed) CHARLES McVEA.

Sworn to and subscribed before me this 28th June, 1878.

[SEAL.] (Signed) WM. RUTH, *Clerk.*

Upon the principals joining in the within bond the same is approved.

(Signed) EDWARD C. BILLINGS,
Judge.

Agreement as to transcript.—Filed July 25th, 1878.

United States circuit for the district of Louisiana. In chancery.

WILLIAM H. SEWARD & GEORGE F. SEWARD *vs.* J. B. COMEAU, SH'FF, ALEXANDER DE CLOUET & Maria Charlotte De Clouet, widow Chevalier Delhommer. } No. 79.

It is agreed by the parties to the above-entitled case that on the trial of the appeal taken therein by the plaintiffs, William H. and George F. Seward to the Supreme Court of the United States,
157 the map made by S. V. Martin, surveyor of the Magenta plantation (the property in controversy in the case) shall be used in evidence, and that a copy thereof need not be made to accompany the transcript of the record.

Second. It is agreed that the original map made by Thomas J. Tully, clerk in the United States land-office, of a portion of the said Magenta plantation shall be used in evidence in like manner, and that a copy need not be made, said map being referred to in his evidence sworn to on the 7th of February, 1878, and marked A.

Third. It is further agreed that of the original record brought up from the parish of St. Martin, beginning with page eighty-six (86) and continuing to the end, to wit, page 103, need not be copied into the transcript of appeal, as the same is made up of extracts from the min-

utes of continuances and interlocutory orders having no bearing on the merits of the case, the preceeding pages containing all the material parts of the record.

Fourth. It is also agreed that the following documents need
158 not be copied into the transcript of appeal, to wit: The entering of the appearance of Henry B. Kelly, W. A. Gordon, and D. S. Bryon, att'y, order to deliver the record to A. L. Tucker, esq., of counsel; consent to extend the time to take testimony; notice of order for publication of testimony; affidavit of Thomas I. Tully made on the 13th of Dec., 1877; marshal's return of service of assignment of rule.

Fifth. The answer of the defendants in injunction having been mislaid or lost, it is agreed that the record shall go up and be filed without the said answer if in the meantime it shall not be found in time to be included therein, and in case said original answer shall not be found, the defendants shall have the right to draw another answer to take the place of the original to be first submitted to plaintiffs in injunction, or their counsel, and filed then in the record of the case in the circuit court, and a certified copy thereof made and forwarded to Washington to be filed in the record in the Supreme Court and form a part of the record in this case.

159 The foregoing shall not be taken as a consent on the part of the defendants or their counsel to the trial of the case in the Supreme Court without an answer.

Sixth. It is further agreed that this agreement shall be filed in the record of this case, No. 7950, C. Court United States, and be copied into transcript of appeal and form a part thereof.

New Orleans, July 25th, 1878.

(Signed) D. S. BRYON,
Of Counsel for W. H. & Geo. F. Seward.

(Signed) A. L. TUCKER,
(do.) MERRICK, RACE & FOSTER,
Of Counsel for Appellee.

160 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing 159 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, also two maps or plans annexed, as per agreement of counsel, in the case of William H. Seward et als. versus J. B. Comeau, sheriff, at als.. No. 7950 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16th day of September, A. D. 1878.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in

due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 16th day of September, A. D. 1878.

EDWARD C. BILLINGS,
Judge.

(Here follow 2 maps marked page 160.)

(Indorsement on cover:) No. 525. William H. Seward, Geo. F. Seward, William E. Walker, & Charles McNeal, appellants, vs. Jean Baptiste Comeau, sheriff, Alexander De Clouet, & al. Louisiana C. C. U. S. Filed 9th October, 1878.

SUPREME COURT

OF THE UNITED STATES.

No. 525.

WILLIAM H. SEWARD, GEORGE F. SEWARD, WILLIAM E. WALKER AND CHARLES McNEAL, APPELLANTS,

vs.

JEAN BAPTISTE COMMEAU, SHERIFF, ALEXANDER DE CLOUET ET AL.

Appeal from the Circuit Court of the United States for the District of Louisiana.

D. S. BRYON,
H. N. OGDEN,
Of Counsel for Plaintiff.

DEMOCRAT PRINT, 62 CAMP STREET, N. O.

SUPREME COURT

OF THE UNITED STATES.

No. 525.

WILLIAM H. SEWARD, GEORGE F. SEWARD, WILLIAM E. WALKER AND CHARLES McNEAL, APPELLANTS,

vs.

JEAN BAPTISTE COMMEAU, SHERIFF, ALEXANDER DE CLOUET ET AL.

Appeal from the Circuit Court of the United States for the District of Louisiana.

D. S. BRYON,
H. N. OGDEN,
Of Counsel for Plaintiff.

DEMOCRAT PRINT, 62 CAMP STREET, N. O.

SUPREME COURT

OF THE UNITED STATES.

No. 525.

WILLIAM H. SEWARD, GEORGE F. SEWARD, WILLIAM E. WALKER AND CHARLES McNEAL, APPELLANTS,

vs.

JEAN BAPTISTE COMMEAU, SHERIFF, ALEXANDER DE CLOUET ET AL.

Appeal from the Circuit Court of the United States for the District of Louisiana.

STATEMENT OF THE CASE.

Alexander DeClouet and Mrs. Marie Charlotte DeClouet, widow of Chevalier Delhomme, defendants, claiming that they were the holders and owners of a cer-

tain promissory note for the sum of five thousand eight hundred and thirty-three dollars and thirty-three and one-third cents, given by William H. Seward, Jr., as part of the purchase price of the Magenta plantation, situated in the parish of St. Martin, in Louisiana; that the act of sale, under which this note was given, was duly recorded as required by law on the fifteenth of March, 1870, and that its payment was secured by vendor's mortgage and privilege upon the whole property; that the act of sale imported a confession of judgment, and that they were entitled to a seizure and sale of the property. Applied to the Third Judicial District Court holding sessions in and for the parish of St. Martin, for the appointment of an attorney to represent W. H. Seward, Jr., as an unrepresented absentee. Edward Simon, an attorney of the parish, was suggested and appointed.

Finally, they asked that the whole property be seized and sold for cash to realize the amount of the note, with eight per cent per annum interest from 5th of March, 1870, subject to a credit of $800 paid in April, 1874, and costs of proceedings.

The order was granted, and the sheriff of that parish, J. B. Commeau, proceeded to seize the property and advertise it for sale.

Whereupon the plaintiffs in this proceeding, William H. Seward, of Winchester county, State of New York, and George F. Seward, of Orange county, State of New York, applied to the State court above mentioned for the writ of injunction restraining the sheriff from the sale of

the property, basing their right to the writ upon numerous grounds, which are set out in the petition to be found at page 10 of the printed record; prominent among which grounds are the following:

1. That Wm. H. Seward did not take a legal title to the plantation from Naomi Arbonneaux, wife of Charles Delhommer, by reason that she did not obtain one from her said husband, because in her suit against him (No. 5080 of the District Court for the parish of St. Martin) she did not have the authorization of the court to sue.

2. That the sheriff's advertisement contains a material misdescription of the property as described in the title, setting forth property that does not exist.

3. Because there was a failure of consideration for the note, as the land actually included in the intended title to William H. Seward was less by more than one-twentieth than the amount guaranteed, say from 1600 to 1700 arpents.

4. The want of authority in the sheriff to sell this plantation as he proposes in fifty-three acre lots, to the great detriment of the plaintiffs and notwithstanding the agreement contained in the deed of sale between vendor and vendee, and furthermore without the color of law.

Pending the proceedings, the whole case, including the proceedings via executiva as well as those upon the application for injunction, were removed to the United States Circuit Court, Fifth Circuit and District of Louisiana, on its chancery side, and there the trial was con-

ducted, which resulted in a decree dismissing the injunction. From that decree this appeal has been taken.

ASSIGNMENT OF ERRORS.

Plaintiffs assign for error—

The court below erred in refusing the injunction asked for upon the grounds set forth in the above statement of the case. The judgment assigns no special reasons for the decree.

ON QUESTION OF REMOVAL.

Defendants in the above-entitled cause urge, that proceedings numbered 8000, entitled Alexander DeClouet vs. Wm. H. Seward, Jr., an absentee, are not included in the application and order for removal of above cause from the State to the United States court, and have, therefore, never been removed.

Proceedings numbered 8000 are not properly a lawsuit, which implies from its very nature a judicial contest between parties litigant: It is known under the Code of Practice of the State of Louisiana as an executory process or writ of seizure and sale, or, in other words, a summary mode of foreclosing mortgages in Louisiana. Upon the presentation of a petition to the judge, accompanied with the pre-execution of certain formalities and service of notices, an ex parte order simply issues, ordering the property mortgaged to be seized and sold, without the previous institution of a lawsuit founded on citation to defendants, culminating into a judgment rendered after a contest on issue joined before the court. See Code of Practice La., Nos. 732 to 753.

The laws of the United States relative to the removal of cases from State courts to United States courts have in view the removal of nothing else but *lawsuits*, properly so called, wherein and whereby a litigation is inaugurated and tendered, or exists between plaintiffs and defendants on issue joined. See acts of Congress of 1789, 1866, 1867 and 1875 in the Revised Statutes of the United States.

In all these statutes a regular suit is contemplated. There must exist a controversy to be determined in some shape or other. Previous to the act of second of March, 1867, the defendants alone in the controverted cause were authorized to demand the removal which said act extended also to the parties plaintiff the right to remove under certain circumstances. The act of 1875 enlarges also the classes of cases that may be removed and gives the right of removal to either party, and refers to a *controversy between citizens of different States*. The language of the act refers "to any suit of a civil nature in law or equity." There can be no earthly question but that there can be no removal, unless the judicial proceedings constitute a lawsuit wherein *contest of* some kind is presented for adjudication. See 19th Stat. at Large, 470.

Now, the judicial proceedings. No. 8000, of themselves involve no contest. invite and form no controversy to be passed upon and tried by a court of justice on a tacit or expressed issue. It is therefore not a lawsuit or cause properly so-called, within the intendment of the abovementioned United States statutes, liable to be removed.

No court would have listened to and granted an application to remove them, because nothing remained to be decided.

How, then, can proceedings by writ of seizure and sale be brought to the cognizance of courts and in the form of lawsuits? We answer, evidently in no other manner than by an opposition or an injunction. The Code of Practice says that the debtor may obtain an injunction to suspend the sale of the mortgaged property ordered to be sold if he files his opposition in writing, alleging some of the reasons contained in article 739 and requires the court to pass summarily on the reasons and merits of the opposition. The debtor may also enjoin the executory proceedings by injunction for other causes not included in article 739. It follows that the filing of an injunction or opposition raises an issue or issues between the debtor and creditor which the writ of seizure and sale of itself did not and could not create, and that from that very moment a lawsuit or controversy sprung into life, subject to the decision of a court of justice.

Proceedings No. 8000, by executory process, then became a lawsuit or controversy by nothing else but the injunction sued out in suit No. 8030, by plaintiffs, William H. Seward, Jr., and others. Whether you consider the one or the other the principal branch of the case is immaterial, for they are so linked together as to form but one suit. One is merged into the other.

They cannot be severed. They form but one suit, one controversy.

At that stage only could an application for a removal be entered. It was so made by calling the attention of the State court to suit No. 8030 of W. H. Seward et als. vs. J. B. Commeau, sheriff, et als., desired to be removed by plaintiffs for the alleged reasons, under the U. S. laws. Plaintiffs considered the case No. 8030 as carrying with itself all other proceedings, papers and documents, and therefore confined themselves to it in their petition for a removal.

Now, this attempt or application at removal was resisted, and one of the grounds was *that plaintiffs, Seward et als., had applied, not for the removal of an entire suit, but for exclusively the removal of a fraction of said suit, and that such an application was not in accordance with the laws of Congress.*

This objection, to be found in the record, admits, necessarily, that the executory proceedings, No. 8000, formed a part of suit No. 8030 by the allegation that plaintiffs, Seward et als., in injunction had only sought the removal of a fractional portion of the same. If proceedings No. 8000 were a fraction of suit No. 8030, and were a part and parcel of the same, it was, consequently, unnecessary for plaintiffs in injunction to advert to said proceedings specially, inasmuch as they were included in the suit sought to be removed.

That the proceedings by executory process and the injunction arresting the same are one and the same suit

has been and is fixed in our jurisprudence. See 4 La. R., p. 89, 15 La., 299 and 434; 13 A., 88.

The above objection of defendants to the removal was thoroughly argued in the State court by opposite counsel, and was overruled and set aside by the decree to be found in the record. The judge stated as follows: "*On the hearing of the objections of defendants on the trial thereof against the application of the plaintiffs in the above entitled suit of W. H. Seward et als. vs. J. B. Commeau and othesr, No. 8030, to have the same removed to the Circuit Court of the United States, this court being of opinion that said objections are untenable, and plaintiffs are entitled to the right claimed, it is therefore ordered, adjudged and decreed that said suit No. 8030 and all papers and documents appertaining thereto be removed to the Circuit Court of the U. S.*," etc.

Evidently there was no force in the objection for the reasons above given, and by reason of the admission that all the papers and documents composing the file No. 8000 were a fractional part of the suit to be removed and ordered to be transferred. The judge, in his order referring to all *papers and documents appertaining to suit 8030*, designedly embraced everything on record connected thereto, in which *all the proceedings, papers and documents in file 8000 must*, therefore, have been intended to be included, and were so included.

It is in accordance with that decree that the copy was made which was filed in the Circuit Court of the United States. The same objection was raised again in the Federal tribunal and with the same result. Upon these

transcripted papers, documents and issues were made and joined by the defendants, which were tried and decided by that court.

ON MERITS.

The quantity of land in the Magenta plantation, the subject of controversy in this suit, sold to William H. Seward, the plaintiff in injunction, and guaranteed, was sixteen to seventeen hundred arpents. The price was $31,500. (See title at p. 10 of record.)

Now the plaintiff in injunction claims that the land falls short in quantity 228.66 acres.

The law of Louisiana requires in the sale of land, that in case there is a diminution in quantity of one-twentieth (1-20), there shall be a corresponding diminution of the price. (See Civil Code article 2494; 1 New Series, 179; 3 do., 695, Davenport's heirs vs. Foster et al.)

The title of the property to Seward calls for the following tracts of land, some of them computed by arpents and some by acres, as follows: No. 1, 500 arpents, No. 2, 500 arpents; No. 3, 200 arpents; No. 7, 20 arpents; No. 10, 10 arpents; making 1230 arpents. No. 4, 51.81 acres; No. 5, 334.32; No. 6, 78.04; No. 8, 171.32; No. 926.66, No. 11, 82.72, No. 12, 130.50; No. 14, 273,31 making 1148.23 acres.

Now an arpent is 5-6 of an acre, and the arpents reduced to acres make 1025 acres; adding the two amounts together we have 2173.23 acres belonging originally to the Magenta Plantation.

But out of this 2173.23 acres the title recites the fol-

lowing sales : No. 2, 4 arpents; No. 3, 88.11 arpents; No. 4, 3 arpents; No. 5, 39.96 arpents; No. 6, 40 arpents; No. 7, 40 arpents; No. 8, 81.36 arpents; No. 9, 20 arpents; No. 10, 30 arpents; No. 11, 40 arpents; No. 12, 170 arpents; No. 13, 40 arpents; No. 14, 40 arpents, making 636.43 arpents, equal to 530.35 acres, and in acres No. 1, 130.88; No. 15, 1 acre, making in all 662.23 acres to be deducted from the 2173.23, which leaves 1511 acres, which is equal to 1765 arpents. Now there are short 228.66 acres, which are equal to 266.79 arpents, which being deducted from the 1765 leave only 1498.23 arpents. Now one-twentieth of 1600 arpents, the amount of land guaranteed to W. H. Seward is eighty arpents, while the deficiency is one hundred and two, within a fraction.

The deficiency occurs in paragraph 13 of the title. The land pretended to be conveyed in that item is 273.36 acres. The land really conveyed amounts to 44.70 acres. See the affidavit of Thos. S. Tully, clerk in charge of the United States Land Office, with his official map annexed and marked A, wherein this deficiency is fully verified.

It will be seen, also, by reference to Mr. Tully's testimony in item No. 3, that J. B. Commeau, the sheriff of St. Martin, has advertised property which does not exist. The title reads : "The west fractional of lot 4 of fractional section No. 27." The advertisement reads : "The west fractional half of lot No. 4 of fractional section No. 28." There is no such property, for it is a fractional section

containing 7.80 acres, and cannot be divided into lots. (See Ray's testimony at p. 76, and Tully's affidavits).

As already stated the price of the plantation was $31,500. Now taking the smaller of the two quantities land warranted, to wit: 1600 arpents, and computing the difference between that number of arpents and the number we really have, to wit: 1498, we find, omitting fractions, that we are entitled to a deduction from the price of $2027.

But, the defendants have filed a pretended survey of the Magenta plantation by S. P. Martin. He makes the number of acres 2002.72, while we make the number 2173.23. The difference between us is accounted for from the fact that he deducts only "*three sales*" of land made out of the plantation, while we deduct fifteen, If we add the three he deducts to his 2002.72 they will make within a few acres the number that we have found, and if he had deducted the whole fifteen he would have found the same result that we have. If it was worth while to show three of the sales upon his map why not all? The reason is obvious, it would have made against the defendants, and was therefore not done. The truth is, after deducting the fifteen sales made out of the place, it is impossible to find the 2002.72 acres within the metes and bounds set forth and described in the title. And this survey, if it were true, would show how ignorant the vendor of the place was of the amount of land contained therein, when she cautiously guaranteed only from 1600 to 1700 arpents. If this pretended survey be

true, she might safely have guaranteed over 2300 arpents.

The record shows that we have long since paid $26,466 56, more than double what the place would sell for to-day, and especially since the sugar-house has been burned down, without insurance, while in the possession and control of the sheriff.

Again, for a large portion of land conveyed to W. H. Seward no patents have been issued—(see evidence of John Ray, at page 30 of record), and it is but just that the vendor should be at the trouble and expense of procuring the patents and perfecting the title.

Again there still remains in full force the objection set forth in the bill for injunction, found on page thirteen of record, to-wit: that W. H. Seward did not take legal title to the plantation from Naomi Arbonneaux, wife of Charles Delhommer, by reason that she did not obtain one from her said husband, because, in her suit against him (No. 5480 of the District Court for the parish of St. Martin,) she did not have the authorization of the court to sue. The laws of the State relative to husband and wife are laws of "public policy," and imperative. If they are not strictly observed, proceedings are null. See Haggerty vs. Corrie, 5 A. 433. In this case the court said: "The defendant's counsel has pointed out a capital error in this instrument, which renders it utterly void. It is a contract made by a married woman without the authority or participation of her husband." See also Rovat vs Buhler et al., 3 N. S., 348; Civil Code, 121 to 124.

An appeal of a married woman without authorization of her husband will be dismissed. 1 Rob., 230; 7 A., 650.

Her own allegations are insufficient to prove her authority. 1 Rob., 468; 2 Rob., 282; C. P.. 105-107.

There will be found in evidence two copies from the District Court of St. Martin in the case above referred to, both copies given by the same officer, but at different times, the first before the seventh of February, 1878 [no date is given by the clerk, and the seventh February is the date of the assent given to it being offered in evidence], which was filed on behalf of defendants in injunction; and the other bears the date given by the clerk of court, the 14th of March, 1878, introduced on behalf of W. H. Seward et al. They contradict each other. The first contains the language, "Leave granted to prosecute this suit, by default." The other contains only the words, "Same order as above, and def't."

The certificates the clerk gives to the two papers differ materially. In the first he says: "A true copy from the minutes." In the second he says: "This is to certify that the foregoing is a true and correct copy of the minutes of, etc., *and contains nothing more*." The clerk, when he gave this last certificate of the minutes, had evidently been reminded of his former certificate; and he therefore gave a more explicit and comprehensive one to this last, in order to do away with the force and effect of the first. He determined that, if there had been error and mistake in the first, there should be no error or mistake in the last. Besides, this last certificate is supported by the

sworn statement of Judge Simon, found at page thirty of record.

It remains to again bring to the notice of the court the fact that the sheriff proposes to sell this plantation in fifty-acre lots, to the great detriment of plaintiffs, not withstanding the agreement contained in the deed of sale between vendor and vendee, and notwithstanding that the law which might have given to him the color of justification has been repealed. See Act No. 32 of 1877. I need not cite authorities to the effect that when a statute on which an act or procedure depends for justification is repealed, the act or proceeding falls with it unless otherwise provided.

But let us suppose the injunction dissolved—what follows? The marshal will proceed to sell the property; he will advertise to sell, in paragraph thirteen of title, $273\frac{36}{100}$ acres, whereas there are only $44\frac{70}{100}$ acres in the tract. Then again the title reads, "The west fractional of lot four of fractional section No. 27." The advertisement reads, "The west fractional half of lot No. 4 of fractional section No. 28." There is no such property. Will the party who bids off the property be compelled to take it? Would this court compel him to take it and pay for it under such circumstances? I judge not. If the purchaser could not be compelled to take the property, what propriety is there in dissolving the injunction and allowing the property to be sold under such conditions. The office of courts is to limit and end litigation; would

not such a proceeding on the part of the court become the fruitful multiplier of litigation ?

Charles Delhommer in his testimony admits the deficiency of $228\frac{66}{100}$ acres. He says they were sold to Seward, but not included in the title, through mistake. If they are not in the title, it follows that Seward has no title, because land passes only by written title. Has the vendor supplied the omission? Has she tendered to Seward a title to the $228\frac{66}{100}$ acres, or filed it in the record? Is it not an old and cardinal maxim of equity that those who seek equity must do it?

Respectfully summitted.

D. S. BRYON,
H. N. OGDEN.
Of Counsel for Plaintiff.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1880.

No. 240.

WILLIAM H. SEWARD, GEORGE F. SEWARD, WILLIAM E. WALKER AND CHARLES McNEAL,
APPELLANTS,

versus

JEAN BAPTISTE COMEAU, SHERIFF, ALEXANDER DeCLOUET ET AL., APPELLEES.

BRIEF ON THE PART OF APPELLEES.

E. T. MERRICK AND
GEO. W. RACE,
for Appellees.

HINTON & MASON PRINT, MASONIC HALL.

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BRIEF ON THE PART OF APPELLEES.

The title page of the Record in this Court, as well as the title endorsed on the Record in the lower Court, is calculated to mislead.

William E. Walker and Charles McNeal, named in this Court as appellants, are only sureties on the defective appeal bond already passed upon by this Court. Record, page 59.

The case of Alexander DeClouet and others versus William H. Seward, Jr., an absentee, (Record, page 12,) has not been removed into the United States Court. The record has no rightful place in the transcript, except as evidence, and still remains in the State Court, where it bears the No. 8000. So the essential parts of the record in the last mentioned case, except the writ under the order of seizure and sale and the sheriff's doings, entries and return thereon, are found in the transcript, from pages 1 to 10 printed Record.

The case which was removed, and which is here on appeal, is for an injunction, and bears the No. 8030 of the State District Court for the Parish of St. Martin. Record, page 16. See Order, page 14, pages 20, 21.

THE ORDER FOR THE REMOVAL by the State Court of the case, is found on page 33 of the printed Record. Record, page 33.

The first case (No. 8000) is what is known in the Louisiana law as an *executory process*. This proceeding, which is a summary process, cannot be resorted to unless the plaintiff, in addition to his mortgage or privilege, is armed with what is called an authentic act, that is, an act formally executed before a *notary public and two witnesses* having certain qualifications. The act, moreover, must import a CONFESSION OF JUDGMENT. In practice, the party does not confess judgment *ipsis verbis*, but the law implies it if he only conforms to certain requirements mentioned in article No. 733 Code of Practice.

"An act is said to import a confession of judgment in matters of privilege and mortgage when it is passed before a notary public or other officer fulfilling the same functions, in the presence of two witnesses, and the debtor has *declared or acknowledged the debt* for which he gives the privilege or mortgage." C. P. 733.

If the mortgage is executed in any other manner, as by private act duly registered, the holder must bring an action in the ordinary way.

The article C. P. 733 is therefore as much incorporated in every authentic mortgage in the requisite form as if the words "confessing judgment" were written in the act itself.

As such acts import a confession of judgment, every person, *sui juris*, executing one is bound to know that he is conferring power on his creditor to go before any court having jurisdiction, and get an *ex parte decree* for execution on his mortgage. The court most naturally implied would be a court having jurisdiction over the land and person of the defendant and belonging to the same government as the resident notary public receiving the act.

The defendants in injunction were in possession of just such a confession of judgment against William H. Seward, (pages 4–8,) dated March 5, 1870, and they presented this confession of judgment, with a petition in due form, to "the Judge *of the Third Judicial District* of the State of Louisiana, holding sessions in and for the Parish of St. Martin." Seward being

an absentee, Edward Simon, who had previously acted as his attorney, was appointed attorney, according to the forms of Louisiana law, to represent the absent defendant. Pages 2, 3; Oath of attorney ad hoc, page 10. C. P. 737.

The land was ordered to be sold by the Court August 4, 1875, *five years ago.* Pages 2 and 3.

It was the sheriff's duty, immediately on receiving the writ on the order of seizure and sale, to give notice three clear days (which is the equivalent of five days) before seizing. McDonough vs. Fost, 1 Rob. 297; 22 Ann. 198. This notice was given. Pages 9 and 10.

There were, then, three ways open for the defendant to revise the order of seizure and sale: if any of the causes mentioned in article C. P. 739 existed, he could file, any time before the sale, his opposition in the same court and obtain an injunction without bond. Or if he thought the decree made by the judge was improperly rendered, he could appeal to the Supreme Court. Gertie vs. Coquet, 3 N. S. 398. And he was also at liberty to injoin for other valid causes, on giving bond.

In this case, the appellant waited until the 30th day of September, 1875, before he took any steps, and then he commenced by an injunction on bond and security, and filing petition with his brother, George F. Seward, (Record, pages 10–15,) Edward Simon acting as their

attorney. This injunction suit bears the aforesaid number 8030. See Injunction, pages 16 and 17.

The defendants in the execution took steps to dissolve the injunction, and filed a motion November 9th, 1875, for that purpose. Pages 18, 20. On the 15th of November, 1875, said Sewards applied for a removal into the Circuit Court of the United States, of the *injunction suit*, No. 8030 of the State Court. Their prayer was granted by the State Judge; page 20—21. There was an attempt by appellees to obtain a rescision of this order in the State Court in vain. It is not necessary to refer to it.

When the case was filed in the Circuit Court, Mrs. DeClouet moved the Court TO REMAND the case to the State Court, on the ground that the controversy did not involve a dispute properly within the jurisdiction of said Circuit Court; and on the ground that the property was in the custody of the sheriff, a State officer, under the order of a State Court, and on the further ground that the Courts of the United States *cannot injoin proceedings in the State Courts.* Record, page 35.

This motion to remand was denied by the Circuit Court. Record, page 35, bottom of page.

On the trial of the case in the United States Circuit Court the INJUNCTION WAS DISSOLVED. Record, page 58. We think an examination of the facts will satisfy the Court that the injunction has been sued out on *frivolous* grounds, and that the sole object has been to gain time and delay. In this the parties have been quite success-

ful, nearly eight years having elapsed since the maturity of the notes and nearly eleven years since this large plantation was delivered to said W. H. Seward as owner. Page 4.

THE TITLE *was examined by Edward Simon, counsellor for W. H. Seward*, the purchaser, who had possession of the various acts belonging to Mrs. Delhommer before the purchase by W. H. Seward. This is recited in the act of sale. Record, page 7. There is therefore no ground to pretend that W. H. Seward was in any manner uninformed of the exact condition of the title to the land, when he executed his promissory notes and the mortgage.

Mrs. Delhommer sold the MAGENTA PLANTATION, situated in the Parish of St. Martin on the west bank of the Bayou Teche, "composed of and comprising heretofore several tracts of land" described in the act of sale, in thirteen parcels and subject to certain deductions. See Record, 5–7.

In order to prevent any dispute in regard to warranty of quantity of land sold, the *act of sale contained this restriction in* THE WARRANTY, viz.:

"The vendor, though *guaranteeing that the Magenta plantation contains from sixteen tv seventeen hundred arpents* of land, transfers, nevertheless, the whole of the title to the several tracts of land hereinbefore described, with the deductions indicated in the acts referred to, which titles and acts were submitted to and

examined by the honorable Edward Simon, acting as an attorney for the purchaser." Record, page 7.

W. H. Seward received *two thousand and two* acres of land, and he and his vendees have held the unquestioned and undoubted ownership of the whole Magenta plantation from that day to this. Nobody has set up any claim to any part of it, and there is not a suspicion anywhere, that the title which Edward Simon examined was not perfect.

On the 16th of January, 1873, *before its maturity*, the Alexander DeClouet and , widow Chevalier Delhomme , bought the note for $5833.33⅓, given as part of the price falling due March 1st, 1873.

The defendants in the injunction suit are therefore as bona fide holders of the mortgage note annexed to their executory proceedings before maturity.

The mortgage contained the pact *de non alienando*, and relieves the holders of the mortgage under the executory process from making subsequent purchasers parties. See pact, Record, page 8.

W. H. Seward alleges that he sold to George F. Seward November 5, 1872. Record, page 12. George F. Seward seems to have sold to Charles Starr, who was in possession of the property when the seizure was made. This, however, is not admitted by the other side. See Deed, Record, page 27; Seward's letter, page 28; Testimony of Delhommer, page 49; Martin, page 48; Burbank, page 55.

We are not in possession of any brief on the part of

the appellants, and can only answer the objections relied on in the lower Court, and we remark that in order to succeed it is incumbent on the plaintiffs to show, by proof, a case authorizing an interposition of the court. *The burden of proof is on them.*

I.

The first objection made in the petition hardly requires notice. The complaint is, that Mrs. Naomi Delhommer was not authorized by the Court to obtain a judicial separation of property. She obtained her judgment in 1866, and if the formality of consent by the judge was not complied with when the Court rendered the judgment, it was only an error which should be corrected on appeal. Until reversed, the judgment must stand. There is nothing to show that the parties to the judgment or creditors made any complaint within the delays allowed by law, or that even now they are dissatisfied. Powell vs. O'Neil, Sheriff, 24 Ann. 522, 523. Until they are, we cannot see what right a stranger has to complain. But Mrs. Delhommer was authorized to prosecute her suit, and a production of the entire record would show the fact. We have, however, produced a copy of the minutes of Court, Friday, September 14, 1866, which shows that leave to prosecute the suit was granted by the Court. We filed this as evidence April, 1878. Record, p. 52. The judgment of separation of property was decreed 29th September, 1866. Eleven or twelve years after

the rendition of this judgment, the appellants obtain from the deputy clerk a paper purporting to be a copy of the entries from the minutes of the court for the same day, in which copy the order authorizing the suit does not appear; and it was argued, therefore, that it did not exist. To this, were it necessary, we could reply: It was in the regular mode of proceeding to grant the order before entering the decree, otherwise, there was an error which could be made available by appeal or action of nullity within the year. A clerk could not have certified our entry, *if it did not exist*. Clerks omit entries, and give rise to writs of certiorari. In the paper produced by plaintiff, there is a suspicious entry which may possibly refer to the order omitted. It is in these words:

"Same order as above and def't."

This critical examination by appellants of the immaterial parts of old records of the court shows an extraordinary diligence in hunting up antiquated and forgotten objections to title, in order to avoid paying for property. If such are valid defences to obligations for the price of property, then the older the title the better the chance of discovering missing links and getting another man's property without paying for it. Is it not a pertinent inquiry, why did not the learned counsel who examined the property consider the objection as formidable when his client thought he was making a good bargain in buying this large sugar

plantation, as he did when he was seeking to relieve his client from the urgent necessity of paying for it?

We do not suppose any one conversant with the Louisiana law will contend, in this Court, that a husband in Louisiana cannot, by notarial act, validly execute the judgment of separation of property by transferring property by notarial act to his wife. Should the Court desire to examine this question, we refer it to the following authorities, viz.:

Lambert vs. Franchbois, 16 L. R. 5.

Civil Code 1870, art. 2446. Code 1825, art. 2421.

Penn vs. Crockett, 7 A. 343.

Warfield vs. Bobo, 21 Ann. 406.

Perret vs. Sararens, 26 Ann. 593.

C. C. 2428. (Code 1825, art. 2402.)

II.

Under the Louisiana law, if the purchaser of lands *goes into possession*, he has *no action in warranty* until he is evicted. In this respect, we think the Louisiana law is identical with the law of the other States.

Berry vs. Pintardo, 3 L. R. 490.

Kemp vs. Kemp, 2 L. R. 240.

The Louisiana law, however, has an exception in favor of the vendee who *has not paid* and is in danger of eviction. Appellants have set up this law as the second ground of injunction in these words: "2d. Because, on account of the cause in the preceding No. 1, your petitioners *have reason to fear of being disquieted*,

and consider they are in imminent danger of eviction." Record, page 12. We have just seen the frivolous nature of complaint number one, to which this law is sought to be applied. But, as the same objection is urged under No. 10, we quote the article of the Code. It reads:

"Art. 2557 Code 1870, (Art. 2535, Code 1825.) If the buyer *is disquieted in his possession*, or has *just reason* to fear that he shall be disquieted by *an action of mortgage*, or by any other claim, he may suspend the payment of the price until the seller *restore him to quiet possession* or *caused the disturbance to cease*, unless the seller prefer to give security."

"There is an exception to this rule, when the buyer has been informed before sale of the danger of eviction."

The Court will search the record in vain, to find any one who has set up any claim to any part of the Magenta Plantation. Nobody has made any pretence; it has not even been whispered that there was a suspicion in the mind of any one that such a claim would be set up. Delhommer, who it is intimated might make such claim, indignantly denies, under oath, that he makes any claim. Record, page 49. He is not only ESTOPPED by signing the act of sale, (pages 4–8,) but by his signature, under oath, to his testimony.

III.

We have already seen that the pact *de non alienando*

is contained in the mortgage in these words: "the said purchaser binding and obliging himself not to sell, alienate or encumber the said property, to the prejudice of these presents." Record, page 8. The suit in the State court is *via executiva* No previous notice was, therefore, required to be given either George F. Seward or his vendee, the present possessor, Mr. Starr.

Snow vs. Trotter, 3 A. 269.

Stevens vs. Pinneo, 26 Ann. 617.

The decisions on this point (in the executory process) are numerous, and the pact has been before this Court, we think, several times. See Watson vs. Bondurant, 21 Wal. 129, and case there quoted.

See, also, Stanbrough vs. McCall, 4 Ann. 325, for a review of the law on this subject thirty years ago.

It may be that we do not understand the third objection set up, but as far as we can understand it, the above is a complete reply.

IV.

The fourth objection contained in the petition for an injunction is, that a *curator* ought to have been appointed to represent W. H. Seward. Page 13. The learned counsel who examined the title for W. H. Seward and who filed the suit for the injunction, and who was in correspondence with appellants, was appointed by the Court attorney to represent the absent defendant. Record, pages 2 and 3. He accepted the

office August 5th, 1875. Page 3. *He took an oath to discharge the duties of the office*, Record, page 10, August 5th, 1875. As attorney for W. H. Seward, he denies the validity of the appointment, and appends his oath to the petition.

See page 13, No. 4, and page 21.

The Code of Practice, under the head of Executory Process, provides, on this subject, as follows:

"Art. 737. If the debtor who has granted the privilege or mortgage is absent and not represented in the State, the judge, at the request of the plaintiff, shall appoint him an ATTORNEY, to whom notice of the demand thall be given in the manner above directed, and contrarily with the seizure and sale, shall be prosecuted." See Monition of John Hall, 21 Ann. 692.

The notice required by the Code of Practice was formally made on the attorney appointed.

Record, page 9; Service, page 10.

The authority of an attorney to represent one, or to receive service of judicial process, contemplated by the above article of the Code of Practice, is to some one who is specially authorized, by power of attorney, to receive service of process.

See Fusiller vs. Robin, 4 Ann. 61.

Leblanc vs. Perroux, 21 Ann. 26.

We have seen no proof of such power of attorney in the record, nor do we remember any power of attorney being in evidence, except that of Mr. Delhommer.

V.

For the fifth ground of complaint in the petition, it is asserted that no notice of the actual seizure was given after it was made, and no notice of sale was given, as required, under writs of *fieri facias* issued on judgments.

The law requires that the *notice* in the *order of seizure and sale must precede* the seizure.

Birch vs. Bates, 22 Ann. 198.

The writ of seizure and sale and the sheriff's endorsement of his proceedings thereon, have not been produced to this Court. How can this Court supervise the same, or direct the sheriff what he shall do in the execution of the writ of the District Court?

VI.

The sixth ground of complaint is, that the notices were not served on "Edward Simon as special agent," instead of "Edward Simon, attorney of the absentee." As the condition of things required the appointment of an attorney to represent Mr. Seward, it shows the good sense of the judge in appointing Mr. Seward's attorney for that place, which he seems to have filled very cheerfully. It certainly is no ground of complaint, that he was a special agent at the time he was the attorney duly appointed under the Code. We have already seen that he has produced no power of attorney authorizing him to receive service of citations and other notices.

VII.

The seventh objection in the petition is because the sheriff advertised the property for sale in subdivisions, as required by the Constitution of 1868, art. 132, and the act No. 40, approved 24th February, 1869. See Revised Statutes, page 667, secs. 3451–3454.

Bowie vs. Lott, 24 Ann. 214.

It must be manifest that the sheriff was, while acting under the order of seizure and sale, subject to the control of the court granting the order, and that the defendant could apply to him to correct any errors in description of property or in the division of the same. As the sheriff is an officer of another jurisdiction, his papers, as we have said, have not been produced in this Court, and how much he has done does not apper. The maxim *omnia rite acta presumuntur* supplies the omission. The sale to W. H. Seward was made in 1870, and the subdivision by the surveyor was a prerequisite for the sheriff's sale in 1875.

If the defendant now desires the plantation to be sold as an entire thing, the repeal of the law requiring the subdivision, by the act of 1877, page 33, No. 32, will give him the right. The dissolution of the injunction leaves the sheriff to act under the laws in force when he shall again act under the writ.

The article of the Constitution of 1868 reads: Art. 132. All lands sold in pursuance of decrees of courts shall be divided into tracts from ten to fifty acres." See Constitution 1868. Revised Statutes, XXXVIII.

There is no such provision in the Constitution of 1879, and we admit that the law was repealed in 1877, but we are at a loss to see how this can affect an injunction sued out two years previously.

VIII.

The next complaint is, that the property was also under seizure by the tax collector. It is not pretended that the delinquent taxes were those of Mrs. Delhommer when she owned the property in 1869, six years previous to the order of seizure and sale. *Therefore, they could not be those of any other persons than the Sewards or Starr.* The appellants have been driven to the straits of making their own wrongful acts the pretexts for arresting the sheriff's sale. The sheriff, being tax collector, had the right to sell the land under the order of seizure and sale, but he could not make a title until the taxes were paid. Any number of writs may be lodged in a sheriff's hands affecting real estate, after as well as before seizure under prior writs. When the property has been sold under any writ, it is appropriated according to priority, etc. See Tuffts vs. Carradine, 3 Ann. 431.

C. P. art. 723. "When several successive seizures are made of the same property, the creditors making them are entitled to a preference over other ordinary creditors, according to the order of their seizure."

But there is no proof that the property was seized for taxes. See Answer, page 28, No. 10.

IX.

The next, and ninth, pretext for an injunction is the pretended deficiency in the low swamp land described in No. 13 of the deed. See No. 13, Record, page 6. If there is an error in the description of the tract of land mentioned in this number of the deed, it is immaterial, for the whole of Magenta plantation was sold, of which this formed a part. Record, page 5. The deed from Joseph M. Moore is referred to, to show what property was bought, and how. See deed from Moore to Garland, agent of Delhommer, 31st May, 1858, Record, page 50. It was bought by Moore of the State land office, and the present divisions may in some manner have been changed by surveys later than those under which the State sold. But the quantity of land is there, and Seward's vendee, Charles Starr, is in possession, and was present when the survey was made. See 5th answer of S. V. Martin, surveyor, page 48. Delhommer's 5th answer, page 49.

But suppose it had turned out that there was a mistake in this description of the overflowed swamp land, and the title had proved defective to a part of it, or even all of it, it would have given no ground for an injunction. We make no reference to the insignificant value of this swamp and overflowed tract of land, which Delhommer thinks worth not more than one dollar an acre. See Delhommer's answer to 6th direct and 3d cross-interrogatory. Record, page 49. The surveyor thinks three or four dollars an acre. It only cost $1000

when lands were worth three or four times their present value. Record, page 50.

The plantation has been suffered to become delapidated, (Record, page 49, Delhommer's 4th cross interrogatory,) and the value of the appendages decrease accordingly. But to return to the question.

First. The Magenta plantation has been surveyed *in the field*, not only under the direction of the sheriff, by the parish surveyor, but also under the direction of Seward's vendee in possession, Charles Starr. S. V. Martin, the surveyor, says, in answer to the fifth interrogatory:

"The actual survey in sections 27, 28, and 34, T. 8 S. R. 5 E. was not made by me, *either in the private survey made at the request of Wm. H. Seward*, or in the survey ordered by the sheriff, though included in both plats; *said sections of land being, at the time of said surveys, covered under water. But in the beginning of the year 1877, at the request of Mr. Charles Starr, I made the actual survey of fractional sections 28 and 34 and west half and lot 4 of fractional section 27, T. 8 S. R. 5 E. containing in all two hundred and seventy two acres and thirty-six one-hundreths of an acre.*

The survey of sections 27, 28 and 34 was made in the presence and assisted by four men, furnished me by Mr. Charles Starr."

T. G. Burbank made a survey of the land mentioned in No. 13 in 1859, for Chas. Delhommer, in obedience

to orders from Col. L. Caldwell, swamp land commissioner. He was at that time engineer for the second swamp land district of Louisiana. He made a plat of the land. It contained, according to his survey, 268.26-100 acres. In answer to the seventh interrogatory, *he says the land is all in one body.* He says further, *there is no doubt that Chas. Delhommer owned, in 1867*, 268.26-100 acres in sections 27, 28 and 34 T. 8, R. 5 East; but says there is an error in the description of the tract in the bill of sale; his language is, that No. 13 "in the bill of sale does not give the true description." But the land in one body is seen under the numbers 51 to 60 inclusive, on the map of the plantation, and contains 272.36-100, acres as we foot them up by the *subdivisions.* A survey of the whole tract by boundaries, as such, would no doubt give the full quantity named in the deed, 273.36-100. The whole of this tract of land appellants have. The application of the sketch from the general land office to the large map does not change the result. The land is there, and has been in the peaceable possession of Delhommer and his vendees for twenty two years, and Seward's possession extends back over ten years. He and his vendees, beside cutting their wood from this tract of land, have vindicated the same against trespassers and recovered damages against them. Delhommer's answer to 7th interrogatory, Record, page 49.

If there is any error in the description of the sub-

divisions, as we say elsewhere, the general description of the Magenta plantation, showing what was intended to be conveyed, would, it seems to us, cure the defect. We understand the law to be as settled by this Court, that mere errors in calls or lines, or designations of tracts of land, are unimportant, so long as the purchaser gets the land and quantity bargained for. It must be borne in mind that the land is swamp land, and was acquired from the State of Louisiana. Burbank was the State surveyor for that district.

The statements, therefore, of Mr. Tully, who *never saw the tract of land*, nor any plat of it, cannot be of much value, though he says there is an error of 228.66. as described. Ray, the register of the State land office, shows that Joseph M. Moore entered 349.64 acres of these lands, according to his books in the State land office.

SECOND. Moore's deed to Delhommer contains a full warranty (Record, page 50), and W. H. Seward has been subrogated to Mrs. Delhommer's action of warranty against Joseph M. Moore. So that, if it should ever happen that Starr or either of the Sewards should be evicted from the 273 acres, they can claim full indemnity from Moore.

THIRD. *The deed of Mrs. Delhommer limits her warranty to* SIXTEEN HUNDRED ARPENTS. She sells the Magenta plantation; she gives the description of the THIRTEEN different titles and tracts comprising it, but

only warrants sixteen hundred arpents. She submits her titles to the astute lawyer of Mr. Seward for examination, and causes his examination of the title to be mentioned in the deed. Record, page 7. Next paragraph to No. 15. The titles were good enough in 1870, when the plantation was to be bought. But in 1875, when the plantation was to be paid for, the most critical examination of the whole thirteen titles could only discover specks on tract mentioned as No. 13, page 6. The other twelve titles are, therefore, necessarily conceded to be perfect.

If we admit, for argument sake, that Tully is correct, and that those who live in the neighborhood, and have been on the ground and surveyed it under the State and under the United States, and held it in possession for years, are mistaken, the case will stand thus: Tully says there is a deficiency of 228.66 acres. He says an arpent is five-sixths of an acre. That is near enough for our purpose. The 228.66 acres make 273.39 arpents. But the Sewards and Starr are in the peaceful possession of *two thousand and two* $\frac{72}{100}$ *acres* contained in the Magenta plantation. This is not guess work, it is the result of repeated surveys made by Delhommer, Seward, Starr and the public authorities. *The two thousand two* $\frac{72}{100}$ acres make, by the same rule, TWO THOUSAND FOUR HUNDRED AND THREE $\frac{22}{100}$ arpents. Deduct the 274.39, and there is left *two thousand one hundred and twenty* $\frac{83}{100}$ arpents to cover the warranty,

that is, 528.83 arpents more than the deed calls for.

There is this also to be observed: the tract of land about which appellants attempt to create this mystification in regard to boundaries is a long distance from the sugar house and buildings, and is of little value.

See Martin, 48; Delhommer, 49.

The limitation of the warranty would have protected the vendor if *there had really been a discrepancy*, and even in the more valuable lands, she being in good faith.

X.

The tenth objection is the allegation that patents have not issued for Nos. 4, 5, 6, 7, 8, 9, 11, 12 and 13 in the sheriff's advertisement. We have already observed that no copy of the sheriff's entries upon the writ have been offered in evidence. Nor have any of his proceedings. But admit that the patents had never issued, and that patent certificates only had issued. And this follows: As Seward's lawyer could not have examined the patents, which had not been issued, he and his client were satisfied with the patent certificates. They would command the patents whenever applied for. Now, if there was really some trouble growing out of the non-issuance of the patents, the appellants could not complain under art. 2557 C. C. quoted in full, *because they knew that the patents had not issued where the title consisted of only patent certificates.* But

there is no trouble anywhere, except in paying for the land. No one sets up any claim to it.

Again: a patent is not necessary to protect title in *Louisiana*. A patent certificate is as good for all practical purposes as the patent. It will sustain a petitory or possessory action just as well as a patent.

King vs. Martin, 5 M. R. 198.

Rhodes vs. Rhodes, 10 L. R. 91.

Guidry vs. Woods, 19 L. R. 338.

XI.

The burden of proof is on the appellants.

They have obtained possession of Mrs. Delhommer's property and title papers. They have enjoyed the same six years without any complaint. It was only after they had made default that they commenced quibbling in court about the description of the swamp land.

Pretexts will not fill the requirements of article 2557, where a man has been for years in the peaceful possession of property and detains it and takes its rev enues, and *refuses to pay the price.*

The disquieting spoken of by the article is something objective and external. *He must have just reason* to fear that an action will be brought. The just reason has to be pronounced by the law. It must be some reason which did not take its origin in the inconvenience of paying the price.

Wrinkle vs. Taylor, 3 N. S. 111.
Enixcios vs. Weiss, 3 N. S. 480.
Hudson vs. Plunkett, 4 L. R. 524.
Woodward vs. Ledoux, 8 Ann. 85.
Watkins vs. Gibbins, 10 Ann. 143.

All of which is respectfully submitted by

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